

Bureau of Project Management
New York State Department of Health
433 River Street 6th Floor
Troy, New York
12180



**RE: Project # 092142-B
Mohawk Valley Endoscopy Center**

To Whom It May Concern:

I have reviewed the internal records of Mohawk Valley Endoscopy Center from January 1, 2012 through December 31, 2012 and submit that I have verified the following data:

Data showing actual utilization including procedures:

- 5835 Patients
- 7046 Procedures

Breakdown of procedures:

- EGD (Upper endoscopy) 2512
- Flexible Sigmoidoscopy-16
- Colonoscopy-4518
- Total -7046 procedures

Data showing breakdown of visits by payor source: See attached

Data showing number of patients who needed follow-up care in a hospital within 7 days after ambulatory surgery=5, excluding direct hospital emergency transfers

- 1 for post-polypectomy bleed. Cauterized and discharged next day
- 1 for micro-aspiration. Treated and discharged next day
- 1 for post-polypectomy bleed with cautery and discharged next day
- 1 for post-polypectomy bleed. Clip applied and discharged next day
- 1 for post-procedure small bowel obstruction. Treated conservatively and discharged after 2 days

Data showing number of emergency transfers to a hospital: 3 Transfers

- 1 for post-procedure pain-no bleeding, no perforation. Discharged from ED
- 1 for aspiration and atrial fibrillation. Discharged next day. Follow-up by cardiologist for new onset AF.
- 1 for new onset atrial fibrillation identified pre-procedure. Procedure cancelled.

Data showing percentage of charity care provided=<1%

Number of nosocomial infections recorded during the year in question=1

Respectfully submitted,
Margaret M. Alteri, RN, BSN, MPA
President, MMAE, LLC

315-383-0241
1602 Euclid Ave
Syracuse, NY 13224

A handwritten signature in cursive script that reads "Margaret M. Alteri".

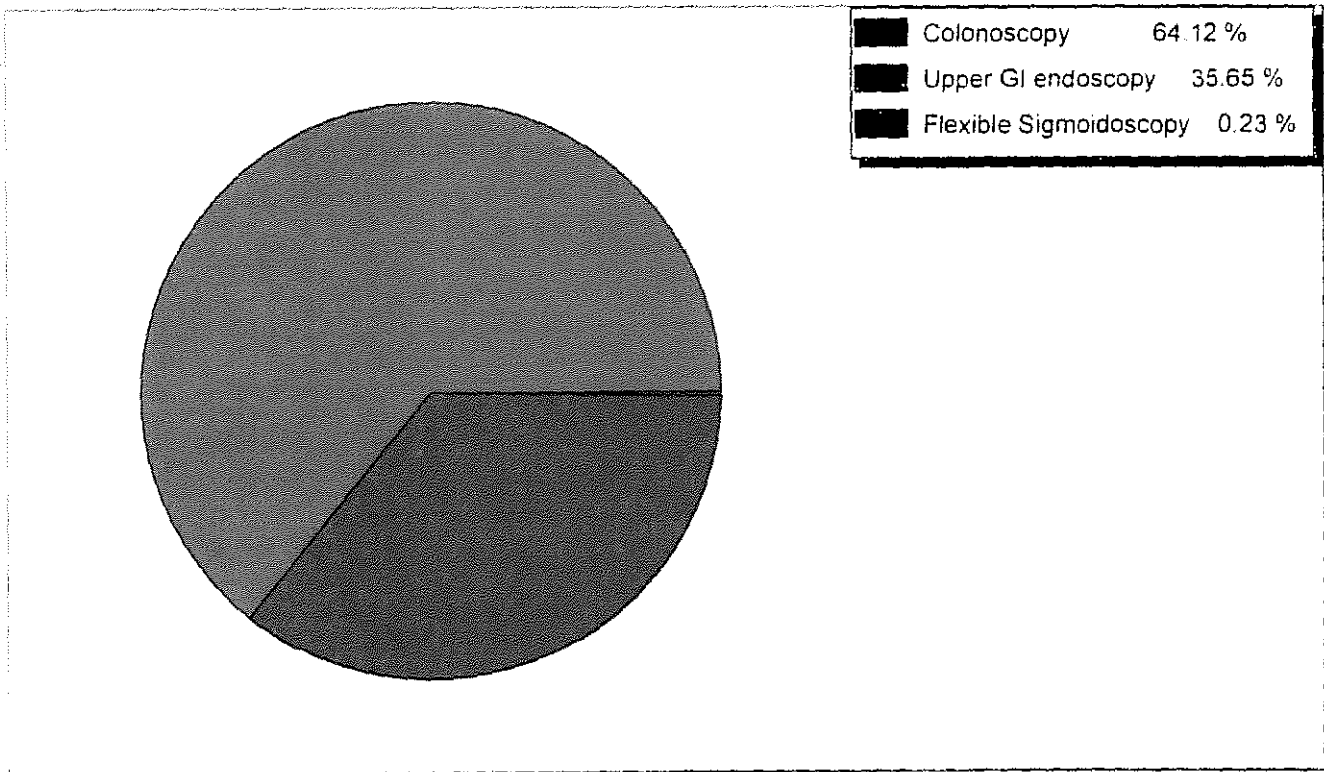
GI

Summary by Procedure

From 1/1/2012 to 12/31/2012

Notes included: Finalized, Addendum, Supervisor Override

<u>Procedure</u>	<u>Number</u>	<u>Percent</u>
Colonoscopy	4518	64.12 %
Upper GI endoscopy	2512	35.65 %
Flexible Sigmoidoscopy	16	0.23 %
Total	7046	100.00 %



Blue Cross	3,296
Medicare	871
MVP	636
United Healthcare Empire	468
United Healthcare	173
RMSCO	163
Aetna	153
POMCO	130
United Healthcare	93
BS Federal	81
American Progressive Today's Options	65
CIGNA	46
HMO Blue	36
"Private" Insurance	35
Fidelis	27
Humana	26
CDPHP	20
No Insurance	14
United Healthcare	10
American Progressive Premium	8
Aetna PPO	
United Healthcare	
CDPHP Medicare	
Medicaid	
RMSCO/Laborers	
Medicare Railroad	
MVP Select	
American Progressive	
AARP	
GHI	
	<hr/>
	6,373



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299
www.health.ny.gov

Nirav R. Shah, M.D., M.P.H.
Commissioner

February 22, 2011

Ms. Ann Gormley
Consultant
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Re: 092142 - B
Mohawk Valley EC, LLC
(Oneida County)
Establish/construct a single-specialty ASC
providing endoscopy, at 116 Business Park
Drive, Utica; Rev: 10/20/10 - Add Faxon St.
Luke's Healthcare and St. Elizabeth Medical
Center to ownership, each with 20%
interest; increase in Total Project Costs
Total Project Cost: \$3,922,746

Dear Ms. Gormley:

The Department of Health has reviewed the documentation addressing the contingencies that were related to the proposed approval of the above project. As of this date, all contingencies on this project have been satisfied.

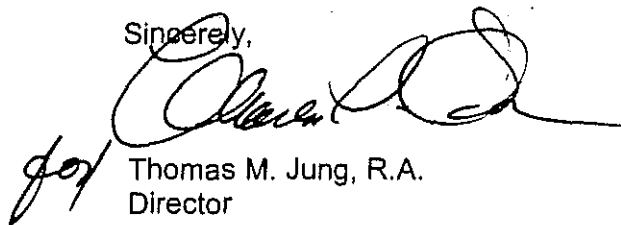
Upon completion of all drawing review submission(s) required by the Bureau of Architectural and Engineering Facility Planning as described in your CON approval letter, you may begin construction. At the time that construction begins, please complete the enclosed form and return it to the Bureau of Project Management.

It is understood that the commencement of construction is your acknowledgment that project costs do not exceed approved project costs as indicated above. Additional costs will not be eligible for reimbursement without the prior approval of the Department.

Per 710.9 you must notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date, so that the pre-opening survey can be scheduled. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations.

If you have any questions regarding this letter, please contact the Bureau of Project Management at 518-402-0911.

Sincerely,


Thomas M. Jung, R.A.
Director
Division of Health Facility Planning

Enclosure

CONSTRUCTION START CONFIRMATION

Please complete the following information and return this form to:

Bureau of Project Management
New York State Department of Health
Hedley Park Place
433 River Street, 6th Floor
Troy, New York 12180-2299

CON Project Number: _____ County: _____

Facility
Name: _____

Project
Description: _____

Construction Start Date: _____

Percent Complete to Date (if any): _____ %

Anticipated Completion Date: _____

Name: _____ Title: _____

Signature: _____ Date: _____

REQUEST FOR CREATION OF AN ALL CONTINGENCIES SATISFIED
LETTER
INSTRUCTING THE APPLICANT TO SUBMIT A
CONSTRUCTION START CONFIRMATION

BPM\Contingencies\ACSMustSubmitCSC.doc

Re:

092142
Mohawk Valley, EC, LLC

Total Project Cost:

3,922,746

Dear:

The Department of Health has reviewed the documentation addressing the contingencies that were related to the proposed approval of the above project. As of this date, all contingencies on this project have been satisfied.

Upon completion of all drawing review submission(s) required by the Bureau of Architectural and Engineering Facility Planning as described in your CON approval letter, you may begin construction. At the time that construction begins, please complete the enclosed form and return it to the Bureau of Project Management.

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If you have any questions regarding this letter, please contact the Bureau of Project Management at 518-402-0911.

Sincerely,

Thomas M. Jung, R.A.
Acting Director
Division of Health Facility Planning

Enclosure

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

433 River Street, Suite 303
Troy, New York 12180

(518) 402-0964
PHHPC@health.state.ny.us

February 17, 2011

Ms. Ann Gormley
Consultant
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Re: Application No. 092142 – Mohawk Valley EC, LLC (Oneida County)

Dear Ms. Gormley:

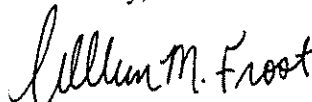
I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Mohawk Valley EC, LLC is APPROVED, the contingencies having now been fulfilled satisfactorily, for a limited life duration of five years from the date the operating certificate is issued. The Public Health Council had considered this application and imposed the contingencies at its meeting of November 19, 2010. You are expected to comply with the conditions listed on the enclosed letter dated December 1, 2010 from Richard Cook.

Pursuant to Section 86 of Part A of Chapter 58 of the Laws of 2010, the Public Health and Health Planning Council is authorized to complete action on any application under consideration by the Public Health Council or State Hospital Review and Planning Council effective December 1, 2010.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Central New York Regional Office of the New York State Office of Health Systems Management, 217 South Salina Street, Syracuse, New York 13202 or (315) 477-8485, within 30 days of receipt of this letter.

Sincerely,



Colleen M. Frost
Executive Secretary

Enclosure
/cf

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

433 River Street, Suite 303
Troy, New York 12180

(518) 402-0964
PHHPC@health.state.ny.us

February 17, 2011

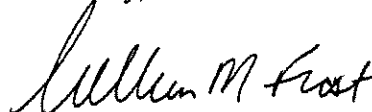
Ms. Ann Gormley
Consultant
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Re: Amended and Restated Articles of Organization of Mohawk Valley EC, LLC

Dear Ms. Gormley:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 19th day of November, 2010, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Amended and Restated Articles of Organization of Mohawk Valley EC, LLC, dated October 17, 2010. Pursuant to Section 86 of Part A of Chapter 58 of the Laws of 2010, the Public Health and Health Planning Council is authorized to complete action on any application under consideration by the Public Health Council or State Hospital Review and Planning Council effective December 1, 2010

Sincerely,



Colleen M. Frost
Executive Secretary

/cf

**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 214 of the Limited Liability Company Law

1. The name of the limited liability company (the "Company") is Mohawk Valley EC, LLC.
2. The date of the filing of the Articles of Organization is October 15, 2009.
3. The amendments effected by this Amended and Restated Articles of Organization are as follows:
 - a. To specify the address of the principal office of the Company;
 - b. To subject any change in the management structure of the Company to the prior approval of the New York State Department of Health;
 - c. To limit the powers and purposes of the Company to the ownership and operation of a single specialty ambulatory surgery center providing endoscopy services licensed pursuant to New York Public Health Law Article 28; and
 - d. To subject changes to membership interests and voting rights in the Company to the provisions set forth in New York Public Health Law Section 2801-a(4)(b).
4. To accomplish amendment 3(a), as stated above, Article 2 of the Articles of Organization is hereby amended to read as follows:

"2. The principal office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502."
5. To accomplish amendment 3(b), as stated above, Article 4 of the Articles of Organization of the Company is hereby amended to read as follows:

"4. The Company shall be managed by its Members. Neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the approval of the New York Department of Health."
6. To accomplish amendment 3(c), as stated above, a new Article 5 of the Articles of Organization is hereby added to read as follows:

"5. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center exclusively providing gastroenterology services licensed under Article 28 of the Public Health Law known as "Mohawk Valley Endoscopy Center" located at 116 Business Park Drive, Utica, New York 13502."
7. To accomplish amendment 3(d), as stated above, a new Article 6 of the Articles of Organization is hereby added to read as follows:

"6. Notwithstanding anything in the articles of organization or operating agreement to the contrary, any transfer, assignment or other disposition of any membership interest

or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.”

8. The Articles of Organization are hereby restated to set forth its entire text as amended:

**ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 203 of the Limited Liability Company Law


1. The name of the limited liability company (the “Company”) is: Mohawk Valley EC, LLC.
2. The principal office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502.
3. The Secretary of State is designated as agent of the Company 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 Company served upon the Secretary is:

c/o the Company
110 Business Park Drive
Utica, New York 13502

4. The Company shall be managed by its Members. Neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the approval of the New York Department of Health.
5. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center exclusively providing gastroenterology services licensed under Article 28 of the Public Health Law known as “Mohawk Valley Endoscopy Center” located at 116 Business Park Drive, Utica, New York 13502.
6. Notwithstanding anything in the Articles of Organization or Operating Agreement to the contrary, any transfer, assignment or other disposition of any membership interest or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.

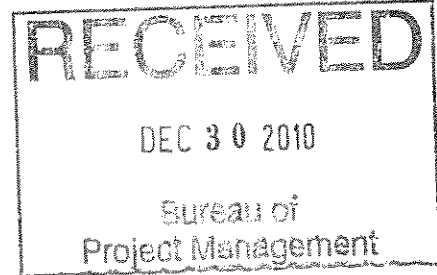
IN WITNESS WHEREOF, these Amended and Restated Articles of Organization have been subscribed this 17th day of October, 2010.

MVEC HOLDINGS, LLC,
Managing Member of Mohawk Valley EC, LLC

By: 
Bradley Sklar, M.D., Member

December 27, 2010

Bureau of Project Management
Division of Health Facility Planning
Office of Health Systems Management
New York State Department of Health
433 River Street, 6th Floor
Troy, NY 12180-2299



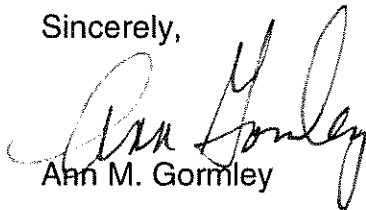
RE: CON#092142-B Mohawk Valley EC, LLC

Dear Mr. Rothman:

Enclosed is a certified check for \$21,466 and three copies of the documentation that addresses the contingencies for the above mentioned application.

Please contact me as soon as possible if any further information is required. We appreciate your assistance with this finalizing this application.

Sincerely,


Ann M. Gormley

under the Loan Documents, and that the Loans and the Loan Documents have been duly authorized by the Corporate Guarantor; (g) the Borrower and the Corporate Guarantor have obtained or will obtain all licenses and approvals required for the construction and operation of an ambulatory surgery center or an office-based surgical facility at the Property; and (h) such other matters concerning the Loan, the Loan Documents, the Borrower, the Guarantors, as the Lender or its counsel may require.

Construction Loan

Disbursement Procedures: All funds disbursed under the Credit Facilities shall be subject to the Loan Agreement and in the case of the Construction Line, the Business Loan Agreement, which shall contain such terms, covenants, and conditions and otherwise be in form, substance and execution, as shall be satisfactory to the Lender, including without limitation, the following:

Draw Request: All requests for disbursement of funds ("Loan Disbursements") shall be submitted on a standard Lender form which shall have costs consistent with the final Project cost breakdown accepted by the Lender in aggregate total and itemization. Each draw request shall be signed by the Borrower and approved in writing by the Project Architect or Engineer.

Affidavits/Lien Waivers: The Borrower shall submit with all draw requests affidavits certifying all outstanding balances due but unpaid for work in place for the Project. With each draw request Borrower shall deliver to Lender waivers of liens from contractors in the respective sum received by each such contractor for all of Borrower's preceding draw requests.

The Borrower shall otherwise also comply with the requirements set forth in the New York Lien Law to the extent applicable.

Inspections: All inspections shall be completed by an agent for the Lender who may require further information, including, but not limited to, documents such as contracts and invoices, to complete the analysis of the Draw Request. The cost of this inspection shall be paid directly by the Borrower.

Disbursements: All disbursements shall be made approximately ten (10) days after receipt of all information required by the Lender to approve the requested disbursements.

Funds will be disbursed directly to the Borrower upon Lender approval, provided however, the Lender reserves the right to pay individual contractors directly or by check jointly payable to Borrower and any such contractor should circumstances warrant in Lender's sole opinion.

Retainage: Lender shall withhold five percent (5%) (the "Retainage") of each such requested Loan Disbursement under the Construction Line for the Project until construction of the Project is complete.

**Permanent Loan
Closing Documents:**

Borrower shall furnish the following documents to the Lender at least five (5) business days prior to the Construction Line Conversion Date (except as noted), all in form substance and execution satisfactory to the Lender and all subject to review, verification and acceptance by Lender.

- (a) A certificate from the supervising architect or General Contractor certifying that the building and improvements have been completed in accordance with the Plans and Specifications as approved by the Lender.
- (b) Evidence of the Property's compliance with all applicable laws (including zoning) and private covenants and restrictions.
- (c) All Certificates of Occupancy for the Property and any other certificates and licenses required by the State of New York or by any other applicable government agency.
- (d) Evidence of suitable policies of: (1) permanent fire and casualty insurance in an amount which shall be at all times the greater of the Loan Amount or full replacement cost of the Property, (2) general liability insurance, (3) business interruption and other insurance relating to the Property or the operation thereof as the Lender may reasonably require from time to time, with the Lender named as first mortgagee on the policies. The policies shall at all times be in form, substance and sufficiency of amount and type of coverage and be issued by insurance carriers acceptable to the Lender.

Title Insurance Policy:

The Lender shall be furnished an ALTA Loan Policy of Title Insurance, Form B, as amended (Additional Coverage Form) issued by a title company satisfactory to the Lender in the Loan Amount, insuring the Lender that the Mortgage is a first lien upon the Property, and including insurance against mechanic's and materialmen's liens and encroachments by or upon the Property and with variable rate, comprehensive and such other endorsements as may be required by the Lender, with all so-called "Standard" exceptions deleted and containing no exceptions other than those specifically approved by the Lender (the foregoing hereinafter referred to as the "ALTA Policy"). If required under the mechanics' lien law, Borrower shall execute and record a Notice of Commencement in compliance with the New York Lien Law.

**Additional Loan
Covenants and
Conditions:**

The Credit Facilities shall be made available under and subject to the terms, conditions, representations, warranties and covenants set forth in the Loan Documents, including, without limitation, the following conditions and covenants:

- (a) Existing bank indebtedness of the Borrower must be financed with Lender upon terms, and subject to documentation, satisfactory to Lender in form and substance.
- (b) Construction of the Project shall be completed prior to twelve (12) months after commencement of Project construction.
- (c) Borrower will provide Lender evidence at Closing and annually thereafter, of suitable policies of: (1) Permanent Fire and Casualty Insurance in an amount which shall be at all times the greater of the Loan Amount or full replacement cost of the Property, (2) general liability insurance, (3) other appropriate insurance relating to the Property or the operation thereof as the Lender may reasonably require from time to time, with the Lender named as first mortgagee on the policies. The policies shall at all times be in form, substance and sufficiency of amount and type of coverage and be issued by insurance carrier acceptable to the Lender.

- (d) Lender shall be entitled to erect a sign on Project premises indicating Lender is the source of financing for the Project.
- (e) Submission to Lender of annual financial statements and Federal Income Tax Returns for Borrower and the Corporate Guarantor within one hundred twenty (120) days of the applicable fiscal year-end.
- (f) Submission to Lender of annual personal financial statements on all Personal Guarantors.
- (g) Submission to Lender of annual income and expense statements with respect to the Property and annual rent rolls.
- (h) Borrower shall maintain a debt service coverage ratio (the "**Borrower DSCR**") of not less than 1.20 to 1 for each fiscal year of Borrower during the term of the Loans, beginning with the Borrower's first fiscal year end following the Closing. The Borrower DSCR shall mean, for any fiscal year of the Borrower, the ratio determined by dividing (i) gross income received by the Borrower for such fiscal year minus owner's distributions and withdrawals and operating expenses incurred by the Borrower for such fiscal year (excluding depreciation and amortization for such fiscal year and interest expense accrued on the Loans during such fiscal year), in each case as determined by generally accepted accounting principles consistently applied, by (ii) the sum of the scheduled principal plus interest payments made or to be made on the Borrower's indebtedness during such fiscal year.
- (i) Borrower shall maintain its demand and depository accounts with the Lender for the life of the Credit Facilities.
- (j) Lender shall have the right to automatically deduct any payments or amounts owed under the Notes or any of the other Loan Documents from accounts Borrower maintains at Lender.

Expenses:

The Borrower and the Guarantors shall pay all costs and expenses in connection with this Commitment and the Credit Facilities including (by way of illustration and not limitation): Lender's

credit investigation fees, Lender's attorneys' fees, Lender's document preparation and review fees, environmental audit and site inspection fees, filing and recording fees, environmental evaluation fee and any and all other costs of the Lender in connection with this Commitment and the Loan.

Assignability of Commitment:

This Commitment is made exclusively to the Borrower and is not assignable nor transferable voluntarily or involuntarily by the Borrower and any such assignment or transfer or attempted assignment or transfer shall be null and void and shall result in this Commitment being automatically and simultaneously terminated.

Notwithstanding the foregoing, in the event that Borrower obtains the requisite regulatory approvals for the construction and operation of an ambulatory surgery center at the Property, Borrower may accept one or more hospital entities as additional members, subject to terms and conditions satisfactory to the Lender in its sole discretion (provided that the total obligation under each Guaranty Agreement to be given by a hospital entity which is a direct or indirect member of the Borrower shall be limited to not more than 20% of the Lender Obligations (calculated as of the time of enforcement, plus the costs of collection and enforcement, including attorneys' fees).

Indemnification:

Borrower and Guarantors agree to indemnify and to defend and hold the Lender harmless against any claims, demands, commissions, finders fees, losses, liabilities and expenses (including reasonable attorney's fees) that may be incurred by or awarded against Lender in each case arising out of this Commitment or the transactions contemplated by this Commitment, except to the extent any such claim, demand, commission, fee, loss, liability or expense results from Lender's gross negligence or willful misconduct.

No Adverse Change:

On or after the date of this letter and/or prior to the Loan Closing Date, the Lender may terminate this Commitment in the event that: (a) Borrower shall fail to comply with any of the terms, provisions or conditions hereof, time being declared to be of the essence hereof; or (b) any representation, warranty, statement, certificate, schedule or report made herein or delivered to Lender in connection with this Commitment shall be false or misleading in any material respect as of the time made or furnished; or (c) Borrower or any of the Guarantors shall (i) apply for or consent to

the appointment of a receiver, trustee or liquidator for any of its property, (ii) admit in writing an inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a Bankrupt or insolvent, or (v) file a voluntary petition in Bankruptcy or an answer seeking reorganization or an arrangement with creditors or take advantage of any Bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute or an answer admitting the material allegations of a petition filed against it in any proceedings under such law; or (d) Borrower shall not pay any of the fees or expenses provided for herein; or (e) the financial condition or operations of Borrower or any of the Guarantors prior to the closing of the Loans shall have changed unfavorably in any material degree from its condition as heretofore represented to Lender; or (f) any potentially material adverse action, suit or proceeding shall be instituted against or threatened against Borrower or any of the Guarantors.

Commitment Expiration:

This Commitment is open for acceptance by the Borrower until 10:00 A.M. Eastern Time on January 5, 2011. If it is not accepted and returned to the Lender by said date, the Commitment shall immediately become null and void without further notice.

Any unpaid Loans costs and expenses shall be paid by Borrower and the Guarantors immediately upon the expiration or termination of this Commitment for any reason.

By executing this letter, you acknowledge that this letter can not set forth every provision imposing obligations on you pursuant to any agreement, instrument or other writing and that failure by Borrower or Lender to reach an agreement on any such provision shall not be deemed to be a breach of any obligation Lender may have pursuant to this Commitment Letter.

The Lender's obligation under this Commitment shall be subject to the satisfactory compliance by the Borrower with all of the conditions contained herein. The issuance of this Commitment shall not prejudice the Lender's rights of review and approval, including without limitation, with respect to documents and materials heretofore delivered to the Lender by or on behalf of the Borrower. This Commitment shall not be binding upon the Lender unless it is accepted in writing by the Borrower and the Guarantors as provided herein, and delivered and returned to Manufacturers and Traders Trust Company, Attention: Alicia M. Brockway, 233 Tennessee Street, Utica, New York 13501 on or before 10:00 A.M. Eastern Time on January 5, 2011. **TIME IS OF THE ESSENCE IN THIS COMMITMENT.**

Very truly yours,

**MANUFACTURERS AND TRADERS
TRUST COMPANY**

By: Alicia M. Brockway
Alicia M. Brockway
Assistant Vice President

ACCEPTANCE OF COMMITMENT

The undersigned hereby acknowledge receipt of the foregoing Commitment this 17th day of December, 2010 and do hereby accept and agree to all of the terms, conditions and time limitations set forth in the Commitment by the execution of same. The undersigned acknowledge and agree that the Lender's obligation under this Commitment is subject to its subsequent acceptance by each of the Personal Guarantors.

BORROWER:

**MOHAWK VALLEY, EC, LLC
By: MVEC HOLDINGS, LLC**

By: [Signature]
Title: Partner

CORPORATE GUARANTOR:

**DIGESTIVE DISEASE MEDICINE OF CENTRAL
NEW YORK, LLP**

By: [Signature]
Title: Partner

116 BUSINESS PARK ASSOCIATES, LLC

By: [Signature]
Title: Partner

ATTACHMENT 2



December 27, 2010

Mohawk Valley EC, LLC,
As agent for the City of Utica Industrial Development Agency
Attention: Peggy Alteri
110 Business Park Drive
Utica, NY 13502

Olympus Financial Services® is pleased to offer the following proposal for your review:

Equipment: Please refer to Olympus Quote No. 136868-Q0-4 dated December 21, 2010.

Equipment User ("User"): Mohawk Valley EC, LLC

Equipment Owner: Olympus America Inc.

Sales Representative: Jim Potts

Facility Structure: Master Lease Agreement ("Agreement")
Fair Market Value without Service

Net Equipment Cost: \$771,698.50

Term: 60 Months

Total Monthly Payment: \$14,446.50 plus all applicable taxes.

Net Agreement: User is responsible for all expenses relating to the Agreement including insurance and all applicable taxes.*

End of Term Options: Fair Market Value.

Documentation: Upon execution of the appropriate Agreement by User and acceptance of Agreement by Owner, the Terms and Conditions of the Agreement and all related documents will supersede this proposal.
If User is tax-exempt, status must be substantiated by a copy of User's tax-exempt certificate

Proposal Expiration Date: This proposal is good for 90 days.

This proposal is subject to credit review and approval by Olympus as well as review and approval of all related documentation. This proposal is not an offer or a commitment and may be withdrawn at any time by Olympus in its sole and absolute discretion.

Best regards,
OLYMPUS AMERICA INC., FINANCIAL SERVICES
John Costa
484-896-5327

OLYMPUS®

Your Vision, Our Future

OLYMPUS AMERICA INC.
CUSTOMER SERVICE
3500 Corporate Parkway
P.O. BOX 610
Center Valley, PA 18034-0610

TEL: (800) 846-9024
FAX: (800) 228-4963

QUOTATION

NO. 136868-Q0-4

Please refer to this number on all
correspondence, or other communications

December 21, 2010

Digestive Disease Med.Of Central Ny
Attention: Ted Kondzielawa
.
Utica, NY 13502

Dear Mr. Kondzielawa:

Thank you for providing Olympus with the opportunity to quote our Medical products as listed on this quote # 136868-Q0-4.

The prices quoted below are based on Olympus - Non Contract pricing.

Should you have any other questions regarding this quotation or any Olympus services, please contact your sales representative:

Name: Jim Potts
E-Mail: Jim.Potts@olympus.com
Phone: (800) 645-8100 x106108
Fax: (800) 228-4963

Thank you for your interest in Olympus and our quality products and services.

Sincerely,

...

Customer Service Representative



Your Vision, Our Future

OLYMPUS AMERICA INC.
CUSTOMER SERVICE
3500 Corporate Parkway
P.O. BOX 610
Center Valley, PA 16034-0610

TEL: (800) 948-9024
FAX: (800) 228-4963

QUOTATION

NO. 136868-Q0-4

Please refer to this number on all correspondence, or other communications

CUSTOMER INFORMATION	OLYMPUS SALES REP.
Customer: Digestive Disease Med.Of Central Ny Attention: Ted Kondzlelawa Address: . Ulica, NY 13502 Phone: (000) 000-0000 Fax: (000) 000-0000 E-Mail: [REDACTED]	Name: Jim Potts MP Sales Representative Home Page: http://www.olympusamerica.com Phone: (800) 645-8100 x106108 Fax: (800) 228-4963 E-Mail: Jim.Potts@olympus.com
TERMS AND CONDITIONS	
Effective: 12/21/2010	Expires: 1/21/2011
Terms: Net 30 days, subject to Olympus credit approval.	F.O.B.: Shipping Point Freight Charges may apply
Tax: When Applicable.	Delivery: 30/45 days After Receipt of Order.
Warranty: Generally, Capital equipment manufactured by Olympus is warranted against manufacturers defect for a period of one year. See Limited Warranty for details.	
FINANCIAL OPTIONS	
<ol style="list-style-type: none"> 1. Net 30 Days/Interest 1 1/12% monthly, subject to Olympus credit approval. 2. American Express, Visa and MasterCard accepted. 3. Olympus offers a wide range of services from financing/leasing options, including a usage-based program that matches payments to procedures performed to a comprehensive service agreement. 	



Your Vision, Our Future

OLYMPUS AMERICA INC.
CUSTOMER SERVICE
3500 Corporate Parkway
P.O. BOX 610
Center Valley, PA 18034-0610

TEL: (800) 848-9024
FAX: (800) 228-4963

QUOTATION

NO. 136868-Q0-4

Please refer to this number on all correspondence, or other communications

QUOTATION DETAIL

	Item / Description	List Price	Your Price	Qty	Extended Price
1	CV-180: New - EVIS EXERA II video system center with High-Definition and Standard Definition signal output, Narrow Band Image processing, electronic magnification of 1.2x and 1.5x, memory card digital image recording, HD/SD serial digital interface, structural enhancement, picture-in-picture, digital-to-digital video recording, annotation and Olympus surgical products compatibility. Requires CLV-180 light source. Standard accessories: - MAJ-1428 CV-180 keyboard for EVIS EXERA II - MAJ-1430 Videoscope cable - MAJ-1462 HD/SD monitor cable - MAJ-1433 Foot holder for CV-180 - MAJ-1432 Spare fuse for CV-180 - MAJ-1466 Scope cable holder for CV-180 - MAJ-155 White balance cap set - MAJ-901 Water container - Power cord	23,500.00	15,275.00	4 ea	61,100.00
2	CLV-180: New - EVIS EXERA II high Intensity 300W xenon light source for Olympus color CCD videoscope system with specially coated filters for Narrow Band Imaging and emergency 100W halogen lamp. Standard accessories: - MAJ-1411 Light control cable (1 pc.) - MAJ-1412 Spare fuse (1 pc.) - MAJ-1433 Foot holder (1 pc.) Note: CLV-180 light source is not compatible with CV-160, 140, 100	13,400.00	8,710.00	4 ea	34,840.00
3	CF-H180AL: New - EVIS EXERA II High-Definition, Narrow Band Imaging compatible, close focus, wide-angle view, Innoflex adjustable stiffness video colonoscope with full screen image, auxiliary water jet, 12.8 mm diameter, 3.7 mm channel, 170° field of view, 168 cm working length and angulation of 180°/180° (up/down) 160°/160° (right/left). Includes biopsy forceps FB-220U (2 pcs.), MAJ-855 auxiliary water tube (1 pc.), MAJ-215 auxiliary water inlet cap (1 pc.). Complete with standard accessories.	41,200.00	26,780.00	12 ea	321,360.00
4	GIF-H180: New - EVIS EXERA II High-Definition, Narrow Band Imaging compatible, close focus, video gastroscope with full screen HDTV image, and 9.8 mm diameter, 2.8 mm channel, 140° field of view, 103 cm working length and angulation of 210°/90° (up/down), 100°/100° (right/left). Includes biopsy forceps FB-220K (2 pcs.), mouthpiece MB-142 (2 pcs.). Complete with standard accessories.	35,700.00	23,205.00	8 ea	185,640.00
5	PCF-H180AL: New - EVIS EXERA II High-Definition, Narrow Band Imaging compatible, close focus, Innoflex adjustable stiffness, ultra slim video colonoscope with forward water jet and 11.8 mm outer diameter, 3.2 mm channel, 140° field of view, 168 cm working length, and angulation of 180°/180° (up/down) and 160°/160° (right/left). Includes biopsy forceps FB-220U (2pc.), MAJ-855 auxiliary water tube (1pc.), MAJ-215 auxiliary water Inlet cap (1pc.). Complete with standard accessories.	42,000.00	27,300.00	4 ea	109,200.00
6	OEV-191H: New - Olympus 19 in. high-definition medical-grade LCD monitor with RGBS, Y/C, and composite video input/output	5,450.00	3,542.50	4 ea	14,170.00
7	OL-0015-02: New - GCX STD ROLLSTAND 47-61.5" 25# MAX W/PWR SPLY HOLSTER & CORD	895.00	581.75	4 ea	2,327.00
8	OEP-4: New - Olympus HD color printer	8,350.00	5,427.50	4 ea	21,710.00
9	WM-DP1: New - EVIS EXERA II double-wide procedure cart	5,995.00	3,896.75	4 ea	15,587.00
10	MAJ-179: New - Sliding keyboard tray for WM-WP1, WM-NP1, WM-DP1	685.00	445.25	4 ea	1,781.00



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QUOTATION

NO. 136868-Q0-4

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QUOTATION DETAIL (continued)

	Item / Description	List Price	Your Price	Qty	Extended Price
11	MAJ-183: New - Scope pole kit for WM-NP1, WM-WP1, WM-DP1	485.00	315.25	4 ea	1,261.00
12	FREIGHT: New - Freight, shipping, and/or handling charges. Expedited freight will incur additional charges.	2,722.50	2,722.50	1 ea	2,722.50

- I. Price quotes and the total package prices are for listed items only.
- II. Changes, additions or deletions from this package quotation may cause pricing adjustments.
- III. Service manuals and additional operator manuals are not included and may be ordered by contacting the Customer Care Center at (800) 848-9024.
- IV. If freight charge is included, freight charge may not necessarily reflect the exact charges paid by Olympus to the carrier due to volume incentive discount agreements entered into between Olympus and carrier.

List Total Price:	\$1,185,762.50
Your Total Price:	\$771,698.50

MASTER LEASE AGREEMENT
Master Agreement Number: Example

This Master Lease Agreement (which, together with all schedules, exhibits, riders, attachments, supplements and amendments hereto are collectively referred to as "Master Agreement"), dated as of **June 10, 2009** is entered into by and between Olympus America Inc., a New York corporation (together with its successors and assigns, if any, "Lessor"), with offices at 3500 Corporate Parkway, Center Valley, PA 18034, and _____, a _____ with offices at _____ ("Lessee").

KEY DEFINITIONS. For purposes of this Master Agreement, the following terms shall have the following meanings ascribed thereto:

- (a) **"Acceptance Date"** means, as to any Lease, the date Lessee shall have actually accepted the Equipment subject to such Lease or shall be deemed to have accepted the Equipment subject to such Lease in accordance with Section 3.
- (b) **"Equipment"** has the meaning specified in Section 1.
- (c) **"Equipment Location"** means, as to any Equipment, the address at which such Equipment is delivered and installed, as specified in the applicable Schedule. Lessee shall not move the Equipment from the Equipment Location without the prior written consent of Lessor.
- (d) **"Lease"** has the meaning specified in Section 1.
- (e) **"Guarantor"** means any guarantor of all or any portion of Lessee's obligations under this Master Agreement and/or any Lease.
- (f) **"Other Financed Items"** has the meaning specified in Section 4.
- (g) **"Periodic Lease Payment"** has the meaning specified in Section 4.
- (h) **"Pricing Expiration Date"** means, as to any Lease, the date set forth in the Schedule for such lease or, if no date is specified, the date that is thirty (30) days following the date of delivery of the Equipment subject to such Lease, to the Equipment Location.
- (i) **"Purchase Documents"** means, as to any Equipment, any purchase agreement, purchase order, contract, bill of sale, license agreement, invoice and/or other documents that Lessee has, at any time, approved, agreed to be bound by or entered into with any Supplier of such Equipment relating to the purchase, ownership, use or warranty of such Equipment.
- (j) **"Related Agreements"** has the meaning specified in Section 4.
- (k) **"Schedule"** means, a Schedule executed by Lessor and Lessee pursuant to Section 2(A).
- (l) **"Seller"** means, as to any Equipment, the seller of such Equipment, as specified in the applicable Schedule.
- (m) **"Supplier"** means, as to any Equipment, the Seller and the manufacturer or licensor of such Equipment collectively, or where the context requires, any of them.

- (n) **"Taxes"** means any and all taxes, duties, charges, fees, levies or other assessments imposed by any taxing authority, including, without limitation, value -added, excise, withholding, personal property, real estate, sale, use, ad valorem, license, lease, service, stamp, transfer, customs, duties, alternative, add-on, minimum, estimated and franchise taxes (including any interest, penalties or additions attributable to or imposed on or with respect to any such assessment).
- (o) **"Term"** means, as to any Lease, the term thereof as specified in the related Schedule.

TERMS AND CONDITIONS

1. **PURPOSE OF MASTER AGREEMENT.** The purpose of this Master Agreement is to set forth the general terms and conditions upon which Lessor shall lease to Lessee and Lessee shall lease from Lessor items of equipment (collectively, "Equipment"), whether payment for such Equipment is remitted on a fixed periodic basis (e.g., weekly, monthly, quarterly) or on a Cost Per Procedure[®] (CPP[®]) basis. The Equipment leased pursuant to this Master Agreement, the payment for such Equipment and other matters related thereto shall be set forth on a separate schedule or schedules to this Master Agreement (each a "Schedule"). Lessor shall assign a number to each Schedule to this Master Agreement, and each Schedule shall reference the Master Agreement number assigned to this Master Agreement. The lease of Equipment pursuant to this Master Agreement under a Schedule is referred to herein as a "Lease".

2. **COMMENCEMENT PROCEDURE.** Subject to the terms and conditions in this Master Agreement and the applicable Schedule, Lessee may, at its option, enter into individual Leases with Lessor as follows:

- A. **Execution of Schedule.** If Lessor and Lessee mutually agree to enter into a Lease for Equipment, then they shall execute a Schedule. Each Schedule, when executed by both Lessee and Lessor, together with the terms and conditions of this Master Agreement, shall constitute a separate and distinct Lease for the items of Equipment identified in the Schedule but shall be subject to the aggregate or collective default provisions of Section 11 (i.e., a default under any Lease is a default under this Master Agreement and all other Leases). In the event of any conflict between the terms of this Master Agreement and such Schedule, the provisions of the Schedule shall govern.
- B. **Acceptance; Term of Leases.** Lessee shall accept the Equipment identified in the Schedule in accordance with Section 3. The Term of each Lease for such Equipment identified in the Schedule shall begin on the Acceptance Date of the Equipment and shall continue for the period described in the applicable Schedule.

3. **SELECTION, INSTALLATION AND ACCEPTANCE OF EQUIPMENT.** Lessee acknowledges, represents and warrants that it has selected the Equipment and has relied on its own skill and experience in selecting Equipment suitable to its particular needs and purposes. Upon receipt of the Equipment, Lessee shall inspect and install the Equipment to confirm that Equipment conforms to Supplier's published specifications and shall verify, by means to be specified by Lessor, such information as Lessor may require, including without limitation, execution of an Acceptance Certificate, if required by Lessor. Lessee shall be deemed to have accepted the Equipment, subject to the provisions of the Supplier's warranty for the Equipment as applicable, if Lessee does not notify Lessor, in writing, within ten (10) days from the date of delivery that Equipment does not meet the Supplier's published specifications. Lessor shall provide confirmation to Lessee of the Acceptance Date if requested by Lessee. If Lessee notifies Lessor that the Equipment fails to meet the Supplier's published specifications and the Lessee is unable to require Supplier to make the Equipment conform to published specifications by the Pricing Expiration Date, then Lessor may, in its sole discretion, elect to declare Lessee in default of this Master Agreement and/or the applicable Lease and exercise any of the rights or remedies available to Lessor (including but not limited to those set forth in Section 12). Delivery and installation costs are Lessee's responsibility. If Lessee separately executed a purchase contract for the Equipment, by executing a Schedule, Lessee assigns its rights, but none of its obligations, under such purchase contract to Lessor. Lessor shall not be liable for specific performance under this Master Agreement or any Schedule hereto.

4. **PAYMENTS.** As payment ("Periodic Lease Payment") for the Equipment under any Lease, Lessee agrees to pay the amounts specified in the applicable Schedule on the due dates specified in the applicable Schedule. All Periodic Lease Payments and other amounts due hereunder shall be made by Lessee unconditionally without defense, counterclaim, or offset of any kind for any reason whatsoever. The expiration or earlier termination of this Master Agreement or the applicable Schedule shall not release Lessee from its obligation to pay any amount owed to Lessor hereunder (including without limitation the Periodic Lease Payments) or operate to discharge any liability or obligation to Lessor incurred by Lessee prior to, contemporaneous with, or after the expiration or termination date of this Master Agreement or the applicable Schedule. Lessor shall have the right to charge an administration fee of up to five percent (5%) of the delinquent amount due to cover the additional administrative burden, overhead and internal costs of collecting such delinquent amount. Unless Lessor has agreed in writing to the Lessee to the contrary, Lessor may adjust the Periodic Lease Payment on any Schedule in an amount proportionate to any increase

or decrease (from the date Lessor calculated the Periodic Lease Payment to the date Lessor receives the duly executed Lease from Lessee) in the interpolated like-term Interest Rate Swap as quoted by the Federal Reserve at: <http://www.federalreserve.gov/releases/H15/update/h15upd.htm>.

In addition to the Periodic Lease Payment attributable to the rental of Equipment, Lessee may request Lessor to finance other items, which Lessor may consent to finance in its sole and absolute discretion (the "Other Financed Items"). Other Financed Items may include, and are not limited to, maintenance and repair contracts related to the Equipment leased under any Schedule hereto, computer hardware, software and related maintenance costs, other equipment and machinery, shipping charges, working capital, consulting and other services. Other Financed Items shall be clearly identified on Schedules, riders, amendments and attachments to this Master Agreement, as applicable. Lessee's rights and obligations with respect to the Other Financed Items shall be identified in separate agreements ("Related Agreements") governing the terms of such Other Financed Items. Lessor shall have no responsibility or obligation with respect to the Related Agreements, unless otherwise expressly agreed in a written instrument duly executed by Lessor and Lessee (to that end, if Lessor is the party to the Related Agreement, then Lessor shall be liable under such Related Agreement in accordance with its terms, but if any affiliate of Lessor is a party to the Related Agreement, then Lessor shall have no liability or obligation under such Related Agreement). If Lessor consents to finance Other Financed Items on any Schedule, rider, amendment or attachment, the Periodic Lease Payment shall be adjusted to include these amounts on the basis Lessor is requested to finance such items, subject to Lessor's cost to finance the Other Financed Items. Lessee hereby assumes all risks and obligations associated with the Related Agreements and shall indemnify and hold harmless Lessor for any expenses or losses incurred as a result of Lessee's failure to completely comply with all terms and conditions of the underlying Related Agreements. If Lessor (not any affiliate of Lessor) is a party to such Related Agreement, then Lessor shall be liable under such Related Agreement in accordance with its terms. Notwithstanding the immediately preceding sentence or anything else in this Master Agreement or the Related Agreement to the contrary, under no circumstances shall the portion of the Periodic Lease Payment attributable to Other Financed Items be cancellable or subject to any offset, defense or counterclaim under this Master Agreement or any Lease.

5. ASSIGNMENT OF EQUIPMENT WARRANTIES. To the extent permitted, Lessor hereby assigns to Lessee, for the Term of any Lease, all Equipment warranties provided by any Supplier in the applicable purchase contract.

6. TITLE. The Equipment is and shall remain the sole personal property of Lessor. No right, title or interest in the Equipment shall pass to Lessee other than those rights expressly set forth in this Master Agreement or a Schedule. Lessee shall, at its expense, protect and defend Lessor's title to the Equipment and shall at all times keep the Equipment free from any legal process and/or encumbrances whatsoever, including but not limited to liens, attachments, levies and executions, and Lessee shall give Lessor immediate written notice thereof and shall indemnify Lessor for any loss caused by the failure of Lessee to take action as provided herein. Lessor shall have the right to enter upon the premises where the Equipment is located for the purpose of confirming its existence, condition, and proper maintenance.

7. REPRESENTATIONS, WARRANTIES & COVENANTS OF LESSEE. Lessee represents, warrants, and/or covenants to Lessor that: (a) the Equipment will be used only (i) by Lessee, (ii) in the manner for which it was intended, (iii) in accordance with all applicable manuals and instructions, and (iv) in compliance with all applicable laws and regulations, (b) it has the authority to enter into this Master Agreement, (c) the person executing this Master Agreement on behalf of Lessee has been duly authorized and has all required corporate approvals, (d) by entering into this Master Agreement, Lessee is not in violation of any laws or agreements applicable to Lessee, (e) Lessee's obligations under this Master Agreement, including all Schedules hereto, are absolute and shall continue in full force and effect regardless of the inability of Lessee to use the Equipment for any reason, (f) Lessee shall, at Lessee's own cost and expense, maintain the Equipment in good repair, operating condition, and working order (ordinary wear and tear excepted), including but not limited to the performance of reprocessing, cleaning, and maintenance procedures described in the manufacturer's instruction manuals, and (g) Lessee shall not modify, alter, or add to the Equipment (other than the use of normal operating accessories or controls) without the prior written consent of Lessor.

8. TAXES. Lessee acknowledges and agrees that all Leases under this Master Agreement are intended to be net leases and accordingly, all applicable Taxes related to the Equipment and/or any Lease shall be paid by Lessee regardless of whether or not Lessee is deemed the owner of the Equipment under any national, state or local laws and

regulations. Lessor shall report and pay all license and registrations fees and Taxes now or hereafter imposed or assessed by any governmental body, agency or taxing authority upon the purchase, ownership, delivery, installation, leasing, rental, use or sale of the Equipment, the Periodic Lease Payments or other charges payable hereunder, or otherwise upon or in connection with any Lease, whether assessed on Lessor or Lessee. Lessee shall remit payment to Lessor for any and all license and registration fees and all Taxes applicable on any Lease, as invoiced by Lessor to Lessee, subject to the tax-exempt provisions listed in this Section 8. Notwithstanding the foregoing, by initialing the "tax-exempt" line located in the signature block of this Master Agreement, Lessee represents and warrants that it is a tax-exempt organization and as such is not subject to applicable Taxes. Tax-exempt status must be substantiated by a copy of Lessee's tax-exempt certificate. If (a) Lessee is not tax-exempt, (b) Lessee loses its tax-exempt status or is acquired by an entity which is not tax-exempt, or (c) a taxing authority imposing Taxes does not permit Lessor to obtain the benefit of Lessee's tax exemption; then (i) the payments hereunder are to be net to Lessor, and (ii) Lessee shall pay directly to Lessor all license and registration fees and Taxes which may be assessed upon any Lease or the ownership, rental, purchase, possession or use of the Equipment during the applicable Term.

9. RISK OF LOSS. In the event any condemnation, taking, loss, destruction, theft or damage beyond repair of the Equipment (collectively, a "Casualty Loss") shall occur, the insurance proceeds (referenced in Section 10) shall be paid to Lessor so that the Equipment can be replaced and, provided that Lessee is not otherwise in default under this Master Agreement, the Lease shall continue in full force without any abatement of the Periodic Lease Payment with such replacement equipment thereafter being deemed to be Equipment leased thereunder. In the event of any repairable damage to any Equipment, the Lease shall continue with respect to such Equipment without any abatement of the Periodic Lease Payment and Lessee shall at its expense promptly cause such Equipment to be repaired to the condition it is required to be maintained in pursuant to Section 7(f). Lessee shall notify Lessor, in writing, of any Casualty Loss or repairable damage to any Equipment as soon as reasonably practicable after the date of any such occurrence.

10. INSURANCE. Lessee shall, at its cost, maintain in force, at all times from shipment of the Equipment until its return to Lessor, property damage and risk insurance and liability with such coverage, from such insurance carriers and in such amounts as shall be satisfactory to Lessor. The Equipment must be insured against all risks that are customarily insured against on the type of equipment leased hereunder. Lessee will name Lessor as loss payee and as additional insured on Lessee's property insurance policy. Lessee shall use commercially reasonable efforts to ensure that each insurer agrees that it will provide Lessor with 30 days' prior written notice of any alteration or cancellation of such policy. Lessee shall, upon request, deliver to Lessor evidence satisfactory to Lessor of such insurance coverage.

11. DEFAULT. Any of the following events or conditions shall constitute an event of default by Lessee under this Master Agreement and all Leases: (a) Lessor has not received any Periodic Lease Payment or other payment due under this Master Agreement or any Schedule, in full, within ten days after its due date; or (b) Lessee or any guarantor becomes insolvent, is liquidated or dissolved, stops doing business or assigns its rights or property for the benefit of creditors, and such actions or proceedings are not dismissed within sixty (60) days after commencement of such actions or proceedings; or (c) a petition is filed by or against Lessee or any guarantor under any section or chapter of the United States Code or any successor or similar law, and such actions or proceedings are not dismissed within sixty (60) days after commencement of such actions or proceedings; or (d) *(for individuals)* Lessee or any guarantor dies or a guardian is appointed for Lessee or guarantor; or (e) Lessee (or any affiliate) is in default of or fails to fulfill the terms of any other agreement between Lessee and Lessor or any affiliate of either; or (f) without Lessor's consent, Lessee attempts to remove from the Equipment Location (as defined in any Schedule hereto), sell, transfer, encumber, part with possession of, or sublet any Equipment; or (g) Lessee consolidates with or merges with or into any entity, or sells or otherwise transfers a majority of its assets or stock to any entity, or incurs a substantial amount of indebtedness other than in the ordinary course of its business, unless Lessee provides reasonable advance written notice to Lessor and Lessor consents, in writing, to not find Lessee in default and continue with the terms of this Master Agreement and all Schedules, which consent shall not be unreasonably withheld or delayed if Lessor determines that the criteria upon which the Lessor had originally approved Lessee for leasing would not be adversely changed as a result of the proposed merger or sale of substantially all of its assets; or (h) Lessee or any guarantor violates any other term of this Master Agreement or any Schedule or any guarantee and fails to correct such violation within ten days after written notice from Lessor.

12. **REMEDIES.** Upon the occurrence of an event of default by Lessee (as described in Section 11), Lessor may, at Lessor's sole discretion, exercise any and/or all of the following remedies: (a) terminate this Master Agreement and/or any Lease; or (b) as liquidated damages for loss of a bargain and not as a penalty, declare all amounts due and to become due under any or all Leases to be immediately due and payable, plus the then-current fair-market value of the Equipment, plus any other amounts due under this Master Agreement, including without limitation any expenses or costs of Lessor in connection with the repossession, holding, repair and subsequent sale, lease or other disposition of the Equipment; however, in no event shall Lessor be entitled to recover any amount in excess of the maximum permitted by applicable law; (c) require Lessee to return the Equipment in good condition, repair and working order at Lessee's cost and expense to a location acceptable to Lessor; (d) to the extent allowed by law, collect interest on any delinquent payment or payments made by Lessor on Lessee's behalf, which shall continue to accrue at the lower of prime plus 2% or the highest lawful rate from the due date until paid by Lessee and/or (e) pursue any other remedy at law or in equity. Lessee's obligations hereunder shall not abate by reason of Lessor's taking of possession of the Equipment or for any other reason. Lessee agrees to pay to Lessor all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in exercising any or all of its rights or remedies or in collecting and setting off money due or to become due under this Master Agreement or any Schedule hereto. All rights and remedies hereunder are cumulative and may be enforced separately or concurrently and from time to time. The exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. If there is more than one Lessee hereunder, each Lessee shall be jointly and severally liable under this Lease.

13. **EQUIPMENT RETURN REQUIREMENTS.** Except if Lessee elects to purchase the Equipment pursuant to any Schedule hereto, on or before the last day of the Term of each Lease (and any other time Lessee is required to return Equipment to Lessor under the terms of this Master Agreement or any Schedule), Lessee, at its own expense, shall immediately return the Equipment, decontaminated, complete, and in good working order and condition (normal wear and tear excepted) in accordance with the manufacturer's guidelines, to such place within the continental United States as is designated by Lessor, properly crated, freight prepaid and insured. Certain Equipment may, at Lessor's sole discretion, require de-installation by Lessor at Lessee's cost and expense. Lessee shall be responsible for, and shall reimburse Lessor promptly on demand for, any cost incurred by Lessor to qualify the Equipment for the Supplier's maintenance service or, if not available, to return the Equipment to good working condition.

If Lessee fails to return the Equipment within thirty (30) days following the last day of the Term, or otherwise arrange to purchase the Equipment in accordance with Section 6 herein and any applicable Schedule and amendments thereto, without any additional notice or documentation, the Term shall be automatically extended for successive months with respect to all items of Equipment then subject to such Lease until such time as the Equipment is returned to Lessor in accordance with this Section 13. At any time during such month-to-month renewal, Lessor shall have the right to terminate this Master Agreement and/or any Schedule by providing written notice to Lessee no less than thirty (30) days prior to the date of termination of such Lease and Lessee shall return all of the Equipment subject to such terminated Lease or Leases to Lessor during such thirty (30) day period. For each month that the Term of such Lease is so extended, Lessee shall pay to Lessor Periodic Lease Payments in amount equal to the Periodic Lease Payment in effect immediately prior to such extension, and all other provisions of this Master Agreement and the applicable Schedule shall continue to apply, including Lessee's obligation to report procedures performed with respect to any Lease that is subject to a Cost Per Procedure[®] (CPP[®]) Schedule. For any Cost Per Procedure Schedule, Lessee agrees that Lessee will report an amount that is no less than the Non-reporting Procedure Amount (as defined in the Cost Per Procedure[®] (CPP[®]) Schedule) to ensure that Lessor is paid the fair rental value of the Equipment during each month of the renewal period. Additionally, in the event Lessee fails to return the Equipment, upon expiration or earlier termination of this Master Agreement or any Schedule hereto, Lessor or its designee may enter upon the premises where the Equipment is located, with or without demand or legal process, and peacefully repossess the Equipment, free from all claims by Lessee and without liability for trespass, conversion, refund, or damages. Lessor may sell, assign, re-lease or otherwise dispose of the Equipment to such persons and upon such terms as Lessor may determine, at one or more public or private sales, with or without notice to Lessee and with or without having the Equipment present at the sale. If notice of sale or re-lease is required by law, written notice not less than ten days prior thereto shall be sufficient. Lessor shall apply the net proceeds of any sale, after deducting its costs and expenses as well as the fair market value of the Equipment on the date of such

sale, to Lessee's obligations under this Master Agreement or any Schedule hereto (including but not limited to the as-yet unpaid Periodic Lease Payments for the balance of the Term of any Schedule) and Lessee shall remain liable for any deficiency.

14. ASSIGNMENT. WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR, LESSEE SHALL NOT (A) SUBLET, LEND, ASSIGN, PLEDGE OR ABANDON THE EQUIPMENT, OR (B) SELL, ASSIGN, OR TRANSFER ANY RIGHTS, INTERESTS, OR OBLIGATIONS UNDER THIS MASTER AGREEMENT OR ANY SCHEDULE HERETO. All rights of Lessor in the Equipment and under this Master Agreement or any Schedule hereto may be assigned, pledged or otherwise disposed of without notice to Lessee, in whole or in part, to one or more assignees, subject to the rights of Lessee. Lessee agrees that any assignee of Lessor will be entitled to receipt of all payments and Lessee's payment obligation to such assignee shall not be subject to any abatement, offset, defense, or counterclaim. Lessee acknowledges notice of Lessor's intent to assign without the prior written consent of Lessee. Notwithstanding any such assignment, Lessor shall remain fully liable for its performance under this Master Agreement and any Schedule hereto and Lessee shall not look to any assignee for the performance of any such obligations.

15. FURTHER ASSURANCE. Lessee shall execute such further documents as reasonably requested by Lessor to more fully protect the rights of Lessor in the Equipment. Notwithstanding that Lessor is the owner of and retains title to the Equipment, to provide for public notice Lessor may file Uniform Commercial Code financing statements disclosing Lessor's interest in the Equipment and Lessee shall execute any financing statements requested by Lessor. In addition, Lessee agrees to obtain and provide to Lessor, as Lessor or its assigns may reasonably request based upon the nature of the Equipment and for purposes of the continued or extension of credit to Lessee under this Master Agreement, estoppel certificates, Lessee's certified annual financial statements, landlord waivers, mortgage waivers, and/or any other documents deemed necessary and relevant by Lessor. The statements and financial reports submitted by Lessee to Lessor are material inducements to the granting of this Master Agreement and all Schedules hereto and that any material misrepresentations therein shall constitute default hereunder. In the event Lessor is deemed not to have title to the Equipment, Lessee hereby conveys a security interest in the Equipment (and all proceeds thereof) in favor of Lessor to secure all obligations of Lessee to Lessor.

16. CHOICE OF LAW & FORUM. This Master Agreement shall be deemed to have been made and entered into in the Commonwealth of Pennsylvania and shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws rules. The parties agree that all controversies, disputes and claims arising out of this transaction or the breach or threatened breach of this Master Agreement shall be adjudicated exclusively by a court of competent jurisdiction within Lehigh County, the Commonwealth of Pennsylvania, or the United States District Court for the Eastern District of Pennsylvania, applying Pennsylvania law without regard to the conflict of laws rules thereof, except that any judgment, order, or decree obtained in any such action may be enforced in other jurisdictions by suit or in any other permitted manner. Lessee consents to the service of process in any action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Lessee at its address set forth herein. Any action by Lessee against Lessor for any default under this Master Agreement, including breach of warranty or indemnity, shall be commenced within one year after any such cause of action accrues. LESSEE AND LESSOR EACH WAIVE ALL RIGHTS TO A TRIAL BY JURY.

17. LIMITATION ON LIABILITY; INDEMNITY. LESSEE ACKNOWLEDGES AND AGREES THAT LESSOR SHALL NOT BE RESPONSIBLE FOR ANY INJURIES, DAMAGES, PENALTIES, CLAIMS OR LOSSES, INCLUDING LEGAL EXPENSES, INCURRED BY LESSEE OR ANY OTHER PERSON CAUSED BY THE TRANSPORTATION, INSTALLATION, MANUFACTURE, SELECTION, PURCHASE, LEASE, OWNERSHIP, POSSESSION, MODIFICATION, MAINTENANCE, CONDITION, OPERATION, USE, RETURN OR DISPOSITION OF THE EQUIPMENT. LESSEE AGREES TO REIMBURSE LESSOR FOR AND DEFEND LESSOR AGAINST ANY CLAIMS FOR SUCH LOSSES, DAMAGES, PENALTIES, CLAIMS, INJURIES, OR EXPENSES. THIS INDEMNITY CONTINUES EVEN AFTER THIS MASTER AGREEMENT HAS EXPIRED FOR ACTS OR OMISSIONS WHICH OCCURRED DURING THE TERM. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR LOSS OF USE), WHETHER OR NOT LESSOR SHALL BE OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH

POTENTIAL LOSS OR DAMAGE. THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS MASTER AGREEMENT.

18. MISCELLANEOUS. This Master Agreement (and all Schedules hereto) contains the entire agreement between Lessee and Lessor. THIS MASTER AGREEMENT MAY ONLY BE AMENDED BY ANOTHER WRITTEN DOCUMENT WHICH STATES THAT IT IS AMENDING THIS MASTER AGREEMENT AND WHICH IS PROPERLY EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF EACH PARTY. Notwithstanding the foregoing, Lessor and Lessee may enter into additional or supplemental Schedules for the Lease of additional pieces of equipment during the term of this Master Agreement. Any of such additional pieces of equipment shall be deemed Equipment governed by the terms and provisions of this Master Agreement, and shall be identified in the supplemental Schedules with a separate Schedule Number. This Master Agreement is a true master lease setting forth the governing terms and conditions for all items of equipment leased by Lessee from Lessor. Any and all prior discussions, negotiations, commitments or understandings related hereto, if any, are hereby merged herein. Any provision or part thereof of this Master Agreement which for any reason may be unenforceable in any jurisdiction shall not invalidate the remaining provisions or parts thereof of this Master Agreement, which shall remain in full force and effect. A delay and/or omission in exercising any right or remedy accruing to Lessor upon any breach or default by Lessee under this Master Agreement shall not be construed as a waiver of any such breach or default or of any similar breach or default thereafter occurring. This Master Agreement may be executed in counterparts, which collectively shall constitute one document.

19. MASTER AGREEMENT INTERPRETATION. For the purposes of this Master Agreement, the term Lessee shall be deemed to include all direct and indirect (through one or more intermediaries) parent companies, subsidiaries and/or affiliates of Lessee to which Lessor now, or in the future, may lease equipment. The terms and provisions of this Master Agreement, as amended or supplemented from time to time shall be binding upon Lessee and the respective parent company, subsidiary and/or affiliate. Each party hereto acknowledges that it has had ample opportunity to review and comment on this Master Agreement. This Master Agreement shall be read and interpreted according to its plain meaning and an ambiguity shall not be construed against either party. It is expressly agreed by the parties that the judicial rule of construction that a document should be more strictly construed against the draftsman thereof shall not apply to any provision of this Master Agreement. The headings contained herein are for reference only and are not a part of this Master Agreement and shall not be used in connection with the interpretation of this Master Agreement.

20. TERM OF MASTER AGREEMENT; SURVIVAL. This Master Agreement shall commence and be effective upon the execution hereof by both parties and shall continue in effect until terminated by either party by 30 days' prior written notice to the other. However, no termination of this Master Agreement pursuant to the preceding sentence shall be effective with respect to any Lease that commenced prior to such termination until the expiration or termination of such Lease and the satisfaction by Lessee and Lessor of all of their obligations hereunder with respect thereto. All representations, warranties and covenants made by Lessee and Lessor hereunder shall survive the termination of this Master Agreement and shall remain in full force and effect. All of Lessor's rights, privileges and indemnities under this Master Agreement or any Lease, to the extent they are fairly attributable to events or conditions occurring or existing on or prior to the expiration or termination of such Lease, shall survive such expiration or termination and be enforceable by Lessor and Lessor's successors and assigns.

21. LEASES NON-CANCELABLE; NET LEASES; WAIVER OF DEFENSES TO PAYMENT. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT EACH LEASE HEREUNDER SHALL BE NON-CANCELABLE, AND THAT EACH LEASE HEREUNDER IS A NET LEASE. LESSEE AGREES THAT IT HAS AN ABSOLUTE AND UNCONDITIONAL OBLIGATION TO PAY ALL PERIODIC LEASE PAYMENTS AND OTHER AMOUNTS WHEN DUE. LESSEE IS NOT ENTITLED TO ABATE OR REDUCE PERIODIC LEASE PAYMENTS OR ANY OTHER AMOUNT DUE, OR TO SET OFF ANY CHARGE AGAINST ANY SUCH AMOUNT. LESSEE HEREBY WAIVES ANY RECOUPMENT, CROSS-CLAIM, COUNTERCLAIM OR ANY OTHER DEFENSE AT LAW OR IN EQUITY TO ANY PERIODIC LEASE PAYMENT OR OTHER AMOUNT DUE WITH RESPECT TO ANY LEASE, WHETHER ANY SUCH DEFENSE ARISES OUT OF THIS MASTER AGREEMENT, ANY SCHEDULE, ANY CLAIM BY LESSEE AGAINST LESSOR, LESSOR'S ASSIGNEES OR SUPPLIER, OR OTHERWISE. IF THE EQUIPMENT IS NOT PROPERLY INSTALLED, DOES NOT OPERATE OR INTEGRATE AS REPRESENTED OR WARRANTED BY SUPPLIER OR IS

UNSATISFACTORY FOR ANY REASON WHATSOEVER, LESSEE SHALL MAKE ANY CLAIM ON ACCOUNT THEREOF SOLELY AGAINST SUPPLIER AND SHALL NEVERTHELESS PAY ALL SUMS DUE WITH RESPECT TO EACH LEASE.

LESSOR:	LESSEE:
By (Signature): _____	By (Signature): _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT 3

TRANSFER AGREEMENT

THIS AGREEMENT is entered into October 15, 2010 by and between **FAXTON-ST. LUKE'S HEALTHCARE (ST. LUKE'S CAMPUS)**, with its principal office located at 1656 Champlin Avenue, New Hartford, New York 13503 (the "Hospital") and **MOHAWK VALLEY EC, LLC**, with offices located at 116 Business Park Drive, Utica, New York 13502 (the "Facility").

RECITALS:

- A. The Hospital's St. Luke's Campus is a Medicare participating hospital capable of providing acute emergency medical care.
- B. The Facility is an Article 28-licensed ambulatory surgery center.
- C. The Hospital and the Facility desire to cooperate in order to assure continuity of care and treatment appropriate to the needs of each patient should a patient, while in the care of the Facility, need urgent or emergent services beyond the capabilities of the Facility.

NOW, THEREFORE, the parties hereby agree as follows:

1. Should the Facility determine that a patient in its care is in need of emergency or urgent medical care beyond the Facility's scope and capabilities and that transfer to a hospital is appropriate, the Hospital agrees to accept the transfer of the patient and to provide emergency and/or urgent medical care through its Emergency Department pursuant to the Hospital's normal policies and procedures and subject to this Agreement.
2. The Facility shall arrange for transportation of the patient to the Hospital. The Facility shall ensure that the method of physically transporting the patient is safe and medically approved by the responsible physician. The Hospital will accept responsibility for the patient upon arrival at the Hospital. Whenever a patient is transferred, the Facility shall undertake its best efforts to see that any and all personal property and any and all medical, clinical, admission, transfer and discharge information about the patient is transferred with the patient to the Hospital or provided shortly after the patient's arrival. Hospital shall arrange for all personal property so transferred to be stored safely in a place known and reasonably accessible to the patient or to a person or agency legally authorized to act in the patient's behalf.
3. Intake of the patients shall occur through the Hospital's Emergency Department, which shall be responsible for coordinating any and all other services offered by the Hospital as may be ordered for the patient.
4. Treatment of such transferred patient shall be determined by the Hospital's Emergency Department physician, who shall be a member of the Hospital's medical staff. The Emergency Department physician may, in his or her sole discretion, collaborate with the medical staff at the Facility to the degree appropriate for continuity, efficiency, economy and quality of care purposes and subject to the consent of the patient. Notwithstanding the foregoing, the parties acknowledge and agree that upon arrival at the Hospital's Emergency Department, the Emergency Department physician shall have sole authority with regard to the patient's care.
5. The Hospital meets the qualifications to accept transfers from the Facility set forth in 10 NYCRR 755.2(a) and 42 CFR 416.41.

6. Neither Hospital nor Facility shall be responsible for payment for care rendered by the Hospital or any individual physician to patients transferred from the Facility. Payment for care of patients transferred from the Facility shall be the sole responsibility of the patient and/or patient's third party payer. Notwithstanding the foregoing, patients transferred from the Facility shall be seen and treated without regard to their ability to pay.
7. Nothing in this Agreement is intended, nor should it be construed, as limiting the rights of either party to contract with any third party for the same or similar services.
8. Hospital and Facility shall each maintain a written copy of this Agreement in the appropriate administrator's office to be made available to the Department of Health upon request.
9. This Agreement shall commence on the date that the Facility begins commercial operations and shall be in effect for a period of 12 months thereafter. Thereafter, it shall automatically renew for an unlimited number of additional one-year terms, unless either party provides the other with written notice at least 30 days prior to the expiration of any one-year term that it does not consent to the automatic renewal. Notwithstanding the foregoing, this Agreement may be terminated at any time, with or without cause, by either party upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

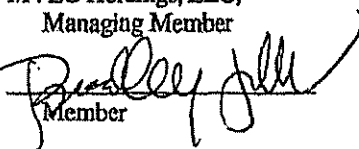
FAXTON-ST. LUKE'S HEALTHCARE

By: 

Title: President / CEO

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: 
Member

TRANSFER AGREEMENT

THIS AGREEMENT is entered into October 15, 2010 and between **ST. ELIZABETH MEDICAL CENTER**, with its principal office located at 2209 Genesee Street, Utica, New York 13501 (the "Hospital"), and **MOHAWK VALLEY EC, LLC**, with offices located at 116 Business Park Drive, Utica, New York 13502 (the "Facility").

RECITALS:

- A. The Hospital is a Medicare participating hospital capable of providing acute emergency medical care.
- B. The Facility is an Article 28-licensed ambulatory surgery center.
- C. The Hospital and the Facility desire to cooperate in order to assure continuity of care and treatment appropriate to the needs of each patient should a patient, while in the care of the Facility, need urgent or emergent services beyond the capabilities of the Facility.

NOW, THEREFORE, the parties hereby agree as follows:

1. Should the Facility determine that a patient in its care is in need of emergency or urgent medical care beyond the Facility's scope and capabilities and that transfer to a hospital is appropriate, the Hospital agrees to accept the transfer of the patient and to provide emergency and/or urgent medical care through its Emergency Department pursuant to the Hospital's normal policies and procedures and subject to this Agreement.
2. The Facility shall arrange for transportation of the patient to the Hospital. The Facility shall ensure that the method of physically transporting the patient is safe and medically approved by the responsible physician. The Hospital will accept responsibility for the patient upon arrival at the Hospital. Whenever a patient is transferred, the Facility shall undertake its best efforts to see that any and all personal property and any and all medical, clinical, admission, transfer and discharge information about the patient is transferred with the patient to the Hospital or provided shortly after the patient's arrival. Hospital shall arrange for all personal property so transferred to be stored safely in a place known and reasonably accessible to the patient or to a person or agency legally authorized to act in the patient's behalf.
3. Intake of the patients shall occur through the Hospital's Emergency Department, which shall be responsible for coordinating any and all other services offered by the Hospital as may be ordered for the patient.
4. Treatment of such transferred patient shall be determined by the Hospital's Emergency Department physician, who shall be a member of the Hospital's medical staff. The Emergency Department physician may, in his or her sole discretion, collaborate with the medical staff at the Facility to the degree appropriate for continuity, efficiency, economy and quality of care purposes and subject to the consent of the patient. Notwithstanding the foregoing, the parties acknowledge and agree that upon arrival at the Hospital's Emergency Department, the Emergency Department physician shall have sole authority with regard to the patient's care.
5. The Hospital meets the qualifications to accept transfers from the Facility set forth in 10 NYCRR 755.2(a) and 42 CFR 416.41.









ATTACHMENT 12

**MOHAWK VALLEY EC, LLC
AMENDED AND RESTATED OPERATING AGREEMENT**

THIS OPERATING AGREEMENT is entered into as of October 15, 2010 to be effective on the Effective Date, by and among MVEC HOLDINGS, LLC ("Holdings"), FAXTON ST. LUKE'S HEALTHCARE ("FSLH") and ST. ELIZABETH MEDICAL CENTER ("SEMC") and MOHAWK VALLEY EC, LLC (the "Company").

RECITALS:

A. The Company's original members have entered into an Operating Agreement dated as of November 10, 2009 (the "Original Operating Agreement").

B. In connection with the admission of the Hospital Members, the restructuring of the physician ownership component of the Company and the receipt of PHC Approval, the Members and the Company wish to amend and restate the Original Operating Agreement as set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Company Law, as the same may be amended from time to time.
- 1.2. "Affiliate" shall mean, when used with reference to a specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person, (b) any Person that is an officer, partner or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of the specified Person and (d) any relative or spouse of the specified Person.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 6.6 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the four operating room, single-specialty ambulatory surgery center specializing in gastroenterology to be located at 116 Business Park Drive, Utica, New York 13502.

- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean Mohawk Valley EC, LLC, a New York limited liability company and its successors.
- 1.10. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP or its successors.
- 1.11. "PHC Approval" shall mean final approval by the Public Health Council of the Health Department of the establishment of the Company.
- 1.12. "Effective Date" shall mean the date on which the Company has received the PHC Approval and has filed its Amended and Restated Articles of Organization with the Secretary of State in the form approved by the Health Department.
- 1.13. "Health Department" shall mean the New York State Department of Health.
- 1.14. "Hospital Member(s)" shall mean FSLH and/or SEMC.
- 1.15. "Managing Member" shall mean Holdings.
- 1.16. "Member(s)" shall mean Holdings and the Hospital Members.
- 1.17. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and the right, if any, to vote or participate in management of the Company.
- 1.18. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined on a cash basis at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.19. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.20. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.21. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.
- 1.22. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.

- 1.23. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.24. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.25. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.26. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or a part of a Member's Membership Interest.
- 1.27. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.28. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 10.1 hereof.
- 2.2. Name. The name of the Company shall be "Mohawk Valley EC, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed for the sole purpose of constructing, owning and operating a four operating room, single-specialty ambulatory surgery center exclusively providing gastroenterology services located in Oneida County at 116 Business Park Drive, Utica, New York.
- 2.4. Effective Date of Agreement. This Amended and Restated Operating Agreement shall be effective on the Effective Date.
- 2.5. Superseding Effect. This Amended and Restated Operating Agreement shall amend, restate and supersede the Original Operating Agreement in its entirety.

3. ESTABLISHMENT OF CLASSES OF MEMBERS

- 3.1. Establishment of Membership Classes. The Company shall have two classes of Members: the Managing Member and the Hospital Members. Except for management and voting rights, the relative rights, powers, preferences and obligations of the Members are identical.
- 3.2. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.

4. MANAGEMENT AND VOTING RIGHTS

- 4.1. Management of the Company. The business and affairs of the Company shall be managed by the Managing Member. Except as set forth in Section 4.2, and notwithstanding anything to the contrary contained in the Act, all decisions with respect to the Company shall be made exclusively by the Managing Member. The Managing Member shall have the duty to conduct the affairs of the Company in the best interests of the Company. The management structure or the provisions setting forth such structure may not be deleted, modified or amended without the prior approval of the Health Department.
- 4.2. Hospital Member Voting Rights. Notwithstanding anything to the contrary contained in this Agreement or in the Act, except for the voting rights identified in subsections (a) and (b) below (the "Hospital Member Voting Rights"), the Hospital Members have no voting rights and all decisions of every nature concerning the Company shall be made by the Managing Member.
 - a. The following decisions shall require, in addition to the approval of the Managing Member, the approval of both Hospital Members:
 - i. Amend the Center's operating certificate to (i) increase the number of operating rooms in the Center beyond four or (ii) provide services other than gastroenterology services;
 - ii. Amend the Company's Articles of Organization or this Agreement;
 - iii. Incur individual capital expenditures (excluding medical equipment) in excess of \$100,000 or total capital expenditures, including medical equipment, in excess of \$250,000 per year following completion of the construction and equipping of the Center;
 - iv. Make a call for mandatory additional capital contributions;
 - v. Issue additional Units of Membership Interest; and
 - vi. Except as provided in Section 9.4, admit a Person as a Member and issue such Person Units of Membership Interest.
 - b. Except for those decisions identified in subsection (a) above which require the affirmative approval of both Hospital Members in addition to the approval of the Managing Member, the

affirmative vote of Members owning a majority of outstanding Units shall be required to approve any of the actions listed in 10 NYCRR Section 405.1(c).

- 4.3. No Authority. No act of any Member shall bind the Company unless such act has been authorized by the Managing Member.
- 4.4. No Exclusive Duty. The Managing Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Managing Member or to the income or proceeds derived therefrom. No Member shall incur any liability to the Company or to any of the other Members as a result of engaging in any other business or venture.
- 4.5. Transactions with Affiliates. The Company may enter into contracts or transactions with Affiliates of the Managing Member including, without limitation, DDM, so long as (a) the Company pays fair market consideration for items provided or services rendered and (b) any such contract or transaction is promptly disclosed to the Hospital Members. The Hospital Members acknowledge and agree that the Company is paying fair market rent under the lease between the Company and 116 Business Park Associates, LLC and fair market compensation under the Medical Director Services Agreement between the Company and DDM. The Hospital Members further acknowledge and agree that Affiliates of the Managing Member have no obligation to provide items or services at a discount or on terms more favorable than those generally provided by third parties. For purposes of Section 411(b) of the Act any contract or transaction that satisfies the requirements of subsection (a) and (b) above shall conclusively be deemed to be fair and reasonable as to the Company.
- 4.6. Limitation of Liability. The Managing Member shall have no personal liability to the Company or the Members for damages from any breach of duty in such capacity; provided, however, that the foregoing shall not eliminate liability of the Managing Member for a judgment or other final adjudication adverse to the Managing Member establishing that the Managing Member's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that the Managing Member personally gained in fact a financial profit or other advantage to which the Managing Member was not legally entitled.

5. OPERATIONAL MATTERS

- 5.1. Operations Committee. The Managing Member shall establish an Operations Committee which shall provide advice and recommendations to the Managing Member on matters including operations, personnel, budgeting, strategic planning, compliance and payer relationships. Members of the Operations Committee shall include one representative from each of the Hospital Members and three physician members of the Managing Member. The Operations Committee shall meet on at least a quarterly basis.
- 5.2. Compliance. The Operations Committee or a subcommittee of the Operations Committee shall serve as the Compliance Committee for the Center. The Compliance Committee shall designate a compliance officer and shall develop a compliance plan for the Center. At the request of any

Member, which shall not be made more frequently than annually, the Company shall engage a third party to undertake a compliance audit.

- 5.3. Government Payers. The Center shall participate with all government or government-sponsored payers.
- 5.4. Charity Care Policy. The Center shall adopt a charity care policy.
- 5.5. Certain Referrals. The Hospital Members shall not take any actions or otherwise encourage its affiliated physicians to refer patients to the Center or to any of the physician members of the Managing Member (“Affiliated Member Physicians”). The Hospital Members shall not track or otherwise measure the referrals of its affiliated physicians to the Center or to any of the Affiliated Member Physicians. Compensation, if any, paid by the Hospital Members to its affiliated physicians pursuant to employment or personal services contracts shall not be not directly or indirectly related to the volume or value of referrals to the Center or to the Affiliated Member Physicians.

6. MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS

6.1. Capital Contributions.

- a. The Members shall make Capital Contributions to the Company in the amounts and at the times set forth on Exhibit A.
- b. Credit Against Capital Contribution Obligation. All payments made by DDM or another Affiliate of the Managing Member for the benefit of the Company including fees of architects, consultants, attorneys, accountants and other advisors, filing fees, construction costs, deposits and other out-of-pocket expense paid by DDM or another Affiliate shall be credited against the Managing Member’s Capital Contribution obligation and shall be deemed to be a Capital Contribution made by the Managing Member.

6.2. Issuance of Units. Upon payment of their respective Phase One Capital Contributions, each Member shall own the number of Units of Membership Interest set forth on Exhibit A, which Exhibit may be modified from time-to-time to reflect changes in ownership of Units or the admission of new Members. Such modifications shall not be considered amendments to this Agreement.

6.3. Remedies for Failure to Fund. If any Member shall fail to pay its Capital Contribution when due the Company shall give written notice of such default to such Member (a “Defaulting Member”) and the Defaulting Member shall have 10 days in which to cure such default. If, after 10 days, the Defaulting Member has not cured such default, then (a) the Managing Member may exercise its option to purchase the Defaulting Member’s Membership Interest pursuant to Section 9.6; (b) the Company may apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) the Company may enforce the Defaulting Member’s obligation to pay its Capital Contribution and recover attorneys’ fees and costs of collection in addition to interest at 15% per annum accruing from the date the Capital Contribution was first required to have been paid.

- 6.4. No Mandatory Additional Capital Contributions. No Member shall be required to make additional Capital Contributions to the Company without the approval of all Members. If additional funds are necessary or desirable to accomplish the purposes or satisfy the obligations of the Company, the Managing Member may, among other things, offer all Members the opportunity to make loans or preferred investments in the Company with such interest rate, repayment terms and preferences as may be necessary to attract the required funds.
- 6.5. Guaranties.
- a. Each Member shall execute and deliver one or more guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center in such amounts, at such times and in such form as directed by the Managing Member (a "Member Guaranty"); provided, however, that the percentage of the obligations guaranteed by the Hospital Members may not exceed their respective Sharing Ratios (20%). If any Member shall fail to deliver its Member Guaranty within 10 days following request, the Member shall be in default and (a) the Managing Member may exercise its option to purchase under Section 9.6 or (b) the Company enforce the Member's obligation to deliver its Member Guaranty and recover attorneys' fees in connection with any enforcement action.
 - b. In the event one or more Members who have delivered a Member Guaranty pays in excess of its share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection.
- 6.6. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.
- 6.7. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.
- 6.8. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

7. ALLOCATIONS AND DISTRIBUTIONS

- 7.1. Allocation of Net Profits and Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.
- 7.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 7.3. Distributions. Net available cash flow of the Company shall be distributed to the Members pro rata to their Sharing Ratios at such times and in such amounts as the Managing Member shall determine.
- 7.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 7.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 7.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 7.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 7.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.
- 7.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit

Mohawk Valley EC, LLC
Department of Health Contingencies

	CONTINGENCY	RESPONSE
1.	Submission of check to NYSDOH for the amount enumerated in the approval letter.	Check for \$21,466 is enclosed.
2.	Submission of a bank loan commitment for the applicant's financing acceptable to the Department	Attachment 1
3.	Submission of a working capital loan commitment acceptable to the Department.	Attachment 1
4.	Submission of equipment leases acceptable to the Department	Attachment 2
5.	Submission of an executed transfer and affiliation agreement that is acceptable to the Department with a local acute care hospital.	Attachment 3
6.	Submission of a staffing plan, acceptable to the Department, confirming that staff of the Center will be separate and distinct from staff of other entities.	Attachment 4
7.	Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities.	Signage will be provided in a building directory and at the entrance to Mohawk Valley EC. This will clearly denote that the center is separate and distinct from other adjacent entities.
8.	Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space.	Entrance to Mohawk Valley EC is directly from the building lobby, and does not disrupt nor impact any other tenant or program in the building. A plan describing entry was provided with the CON application.
9.	Submission of documentation, acceptable to the Department, that the clinical space will be used exclusively for this purpose.	Attachment 5
10.	Submission of an agreement, acceptable to the Department, regarding the provision of quality oversight functions.	Attachment 6
11.	Submission of evidence of a protocol ensuring all physicians practicing at the ASC commit, in writing, to maintain in good standing any responsibilities with all acute care hospitals where privileges have been granted.	Attachment 7



	CONTINGENCY	RESPONSE
12.	Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department beginning in the second year of operation.	Attachment 8
13.	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, and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay.	Attachment 9
14.	Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws; with consultation of the legal counsel. And it is concluded that proceeding with the proposal is acceptable.	Attachment 10
15.	Submission of a photocopy of the applicant's executed proposed amended and restated articles of organization, which is acceptable to the Department.	Attachment 11
16.	Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department.	Attachment 12
17.	Submission of a photocopy of MVEC Holdings, LLC's executed proposed articles of organization, which is acceptable to the Department.	Attachment 13



	CONTINGENCY	RESPONSE
18.	Submission of a photocopy of MVEC Holdings, LLC's executed proposed operating agreement, which is acceptable to the Department.	Attachment 14

	CONDITIONS	RESPONSE
1.	The submission of State Hospital Code Drawings for review and approval, as described in BARFP Drawing Submission Guidelines DSG-01	A CD of completed construction drawings is herewith provided.
2.	The submission of Final Documents, as described in BARFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction.	A CD of completed construction drawings is herewith provided with a request to start construction.
3.	The applicant shall complete construction by August 1, 2011. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10 (a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner.	Construction is expected to start immediately with DOH permission to start construction, and will be completed by August 1, 2011 pending DOH's permission to start construction by January 1, 2011.



ATTACHMENT 1



233 Genesee Street, Utica, NY 13501
CNY Business & Professional Banking

December 21, 2010

Mohawk Valley EC, LLC
116 Business Park Drive
Utica, New York 13502

Gentlemen:

Manufacturers and Traders Trust Company, a New York banking corporation, (hereinafter called "**Lender**") hereby offers, subject to the hereinafter described conditions (the "**Commitment**"), to make the following-described credit facilities (the "**Credit Facilities**"):

Borrower: Mohawk Valley EC, LLC (the "**Borrower**").

Guarantors: Digestive Disease Medicine of Central New York, LLP and 116 Business Park Associates, LLC (collectively, the "**Corporate Guarantor**") and Richard Cherpak, MD, Bradley Sklar, MD, Robert Pavelock, MD, Garth Garramone, MD, Brett Gandhi, MD, Norman Neslin, MD and Stanley Weiselberg, MD (the "**Personal Guarantors**") (hereinafter referred to collectively as the "**Guarantors**").

Credit Facilities: Facility 1: A construction line/permanent mortgage term loan in the amount of up to One Million Seven Hundred Twenty Thousand Dollars (\$1,720,000.00), or so much thereof as may be advanced from time to time to or for the benefit of the Borrower subject to the terms and conditions of a construction loan agreement, which must be in form, substance and execution satisfactory to the Lender (the "**Loan Agreement**"). The proceeds of the construction line made available under Facility 1 (the "**Construction Line**") are to be used solely and only for the purpose of providing mortgage financing for the interior and exterior renovations by Borrower of a commercial building on real property located at 116 Business Park Drive, Utica, New York to construct a surgical ambulatory center or office based surgical facility (such real property together with all buildings and other improvements now thereon or to be constructed thereon and easements and right of ways appurtenant thereto are referred to herein as the "**Property**") in accordance with the Plans and Specifications approved by the Lender as provided herein (the "**Project**") and to pay such related expenses and costs thereof and hereof as shall be approved by Lender (the "**Project Costs**"). Subject to the terms and conditions set forth in this Commitment,

upon the completion of the Project and the final advance under the Construction Line, as determined pursuant to the Loan Agreement, the Construction Line shall be converted to a permanent mortgage loan (the "Permanent Loan"). As used herein, "Construction Line Conversion Date" shall mean that date on which the Construction Line is converted to the Permanent Loan. The Permanent Loan proceeds are to be used solely and only for the purpose of refinancing the Construction Line and providing permanent mortgage financing for the Property.

Facility 2: A multi-disbursement term loan in the amount of Five Hundred Thousand Dollars (\$500,000.00), or so much thereof as may be advanced from time to time to or for the benefit of the Borrower subject to the terms and conditions of the Loan Agreement (as hereinafter defined). The proceeds of Facility 1 are to be used solely and only for the purpose of providing financing for the purchase of furniture, fixtures and equipment by Borrower for the ambulatory surgery center or office-based surgical facility to be operated by Borrower (or its affiliate) at the Property.

Facility 3: A multi-disbursement term loan in the amount of Two Hundred Twenty Thousand Dollars (\$220,000.00), or so much thereof as may be advanced from time to time to or for the benefit of the Borrower subject to the terms and conditions of the Loan Agreement (as hereinafter defined). The proceeds of Facility 2 are to be used solely and only for the purpose of providing permanent working capital.

Subject to the terms and conditions set forth in this Commitment and as determined pursuant to the Loan Agreement, upon the expiration of the six month period following the date first advances are made under Facility 2 and Facility 3 shall be converted to term loans. As used herein, "Second Conversion Date" shall mean that date on which such advances are converted to term loans.

Interest:

Facility 1: The loans made under Facility 1 shall bear interest at the Lender's Prime Rate plus 100 basis points and such rate shall be adjusted with each adjustment of the Lender's Prime Rate. As of the Construction Line Conversion Date, the interest rate for Facility 1 (the "Permanent Loan Interest Rate") shall be fixed, at Borrower's election, exercised by written notice to the Lender delivered not less than two (2) business days prior to the Date of Closing, at (i) the fixed rate per annum equal to 300 basis points above the rate determined by the Lender to be its Cost of Funds

based on obligations adjusted to a constant maturity of five (5) years in effect two (2) Business Days prior to the Construction Line Conversion Date (such option is referred to as "**Permanent Loan Option 1**"), or (ii) the fixed rate per annum equal to 325 basis points above the rate determined by the Lender to be its Cost of Funds based on obligations adjusted to a constant maturity of ten (10) years in effect two (2) Business Days prior to the Construction Line Conversion Date (such option is referred to as "**Permanent Loan Option 2**"). Provided that the Lender does not exercise a Call Option (as hereinafter defined) on the anniversary of the Construction Line Conversion Date occurring 60 months from the Construction Line Conversion Date (the "**First Interest Adjustment Date**") or one hundred twenty (120) months from the Construction Line Conversion Date (the "**Second Interest Rate Adjustment Date**"), the interest rate under Permanent Loan Option 1 shall be adjusted as of the First Interest Adjustment Date and the Second Interest Adjustment Date and the interest rate under Permanent Loan Option 2 shall be adjusted as of the Second Interest Adjustment Date, in each case, to a rate to be determined and agreed upon by the Lender and Borrower in a written agreement signed by both parties and accepted by the Lender prior to such date. Interest on the Permanent Loan will be calculated on the basis of a 360-day year consisting of twelve (12) months with the actual number of days of each month (28, 29, 30, or 31).

Facility 2: The loans made under Facility 2 shall bear interest at a variable rate of interest equal to the Lender's Prime Rate plus 100 basis points and such rate shall be adjusted with each adjustment of the Lender's Prime Rate. As of the Second Conversion Date, the interest rate for Facility 1 shall be fixed at 325 basis points above the rate determined by the Lender to be its Cost of Funds based on obligations adjusted to a constant maturity of seven (7) years in effect two (2) Business Days prior to the Second Conversion Date.

Facility 3: The loans made under Facility 3 shall bear interest at a variable rate of interest equal to the Lender's Prime Rate plus 100 basis points and such rate shall be adjusted with each adjustment of the Lender's Prime Rate. As of the Second Conversion Date, the interest rate for Facility 2 shall be fixed at 325 basis points above the rate determined by the Lender to be its Cost of Funds based on obligations adjusted to a constant maturity of three (3) years in effect two (2) Business Days prior to the Second Conversion Date.

Interest on the outstanding principal under the Credit Facilities will be calculated on the basis of a 360-day year consisting of twelve (12) months with the actual number of days of each month (28, 29, 30 or 31).

Loan Payments:

Facility 1: Interest only payments on the Construction Line shall be payable monthly on the first day of each calendar month on the amount of principal balance outstanding from time to time beginning on the first day of the first calendar month following the Date of Closing of the Construction Line and continuing on the first day of each and every calendar month thereafter.

If Borrower chooses Permanent Loan Option 1, there will be sixty (60) equal monthly payments of principal and interest in the amount calculated by the Lender as of the Construction Line Conversion Date to amortize the Permanent Loan on a fifteen (15) year amortization schedule. The amount of each such monthly payment shall be adjusted at the First Interest Adjustment Date and at the Second Interest Adjustment Date to continue to amortize the Permanent Loan on the same fifteen (15) year amortization schedule. If Borrower chooses Permanent Loan Option 2, there will be one hundred twenty (120) equal monthly payments of principal and interest in the amount calculated by the Lender as of the Construction Line Conversion Date to amortize the Permanent Loan on a fifteen (15) year amortization schedule. The amount of each such monthly payment shall be adjusted at the Second Interest Rate Adjustment Date to continue to amortize the Permanent Loan on the same fifteen (15) year amortization schedule. Under both options, each such payment will include a payment of interest at the then applicable Permanent Loan Interest Rate based on such amortization. Payments will be applied first to interest and then to principal. Payments will begin on the first day of the month following the Construction Line Conversion Date. If the Construction Line converts on any day other than the first day of the month then a payment of interest is due at closing calculated from the Closing Date to the end of the month.

Facility 2: Interest only payments on the advances made under Facility 2 shall be payable monthly on the first day of each calendar month on the amount of principal balance outstanding from time to time beginning on the first day of the first calendar month following the Date of Closing and continuing on the first day of each and every calendar month thereafter. Commencing on the Second Conversion Date, there will be eighty four (84) equal

monthly payments of principal and interest in the amount calculated by the Lender as of the Second Conversion Date to amortize the advances made under Facility 1 on a seven (7) year amortization schedule.

Facility 3: Interest only payments on the advances made under Facility 3 shall be payable monthly on the first day of each calendar month on the amount of principal balance outstanding from time to time beginning on the first day of the first calendar month following the Date of Closing and continuing on the first day of each and every calendar month thereafter. Commencing on the Second Conversion Date, there will be thirty six (36) equal monthly payments of principal and interest in the amount calculated by the Lender as of the Second Conversion Date to amortize the advances made under Facility 2 on a three (3) year amortization schedule.

Each such payment will include a payment of interest at the then applicable Interest Rate based on such amortization. Payments will be applied first to interest and then to principal. Payments will begin on the first day of the month following the Conversion Date. If a conversion date falls on any day other than the first day of the month then a payment of interest is due at closing calculated from the Closing Date to the end of the month.

Loan Maturities:

Facility 1: The Construction Line will have a twelve (12) month term. The Permanent Loan will have a fifteen (15) year term, subject to the Lender's right to exercise, in its sole discretion, an option (a "**Call Option**") to accelerate the maturity date of the Permanent Loan, such that the outstanding and unpaid principal balance, together with all accrued and unpaid interest, fees and expenses, and all other amounts due and owing under the Note, shall be due and payable on and as of (as applicable) the First Interest Adjustment Date, or if not so exercised and enforced, on and as of the Second Interest Adjustment Date (collectively, as applicable, the "**Call Option Dates**"), provided that written notice of the Lender's intention to exercise any such Call Option must be provided by the Lender to Borrower no later than one hundred twenty (120) days prior to the applicable Call Option Date. The maturity date under the Permanent Loan is referred to as the "**Permanent Loan Maturity Date**". Unpaid principal and accrued interest will be due and payable on the Permanent Loan Maturity Date.

Facility 2: Advances made under Facility 2 will have a seven (7) year term with a maturity date approximately eighty four (84) months from the Second Conversion Date. Unpaid principal and accrued interest will be due and payable on such maturity date.

Facility 3: Advances made under Facility 3 will have a three (3) year term with a maturity date approximately thirty six (36) months from the Second Conversion Date. Unpaid principal and accrued interest will be due and payable on such maturity date.

Late Charge:

If Borrower fails to pay, within ten (10) days of its due date, any amount due and owing pursuant to the Loan Agreement or any other agreement executed and delivered in connection with the Credit Facilities, Borrower shall immediately pay to the Lender a late charge equal to six percent (6%) of the delinquent amount.

Default Rate:

In the event of any default, at the option of the Lender, the interest rate shall be increased to three (3) percentage points per year above the otherwise applicable rate per year on the Loans. (the "**Default Rate**").

Loan Fees:

On or before the Date of Closing, Borrower shall pay to Lender (i) a loan origination fee of Five Thousand Dollars (\$5,000.00) for Facility 1; (ii) a loan origination fee of Five Hundred Dollars (\$500) for Facility 2; and (iii) a loan origination fee of Five Hundred Dollars (\$500) for Facility 3. Borrower hereby acknowledges that each such fees shall be for the applicable services rendered, supported by good, valuable and adequate consideration, and not refundable for any reason.

Prepayment:

Borrower shall have the option to prepay the Loans, in whole or in part in accordance with the terms of the Loan Documents, provided that, in the event that Borrower prepays the advances made under the Credit Facilities, Borrower shall pay the Lender a premium equal to the greater of (a) one percent (1%) of the amount prepaid, or (b) the present value of the difference between (i) the amount of interest that would have accrued on the prepaid principal from the date of prepayment through the earlier of the Maturity Date or the date of the next scheduled interest rate adjustment, if any ("**Measurement Period**") at the fixed interest rate in effect on the date of prepayment and (ii) the amount of interest that would have accrued on the prepaid principal during the Measurement Period at the Current Market Rate. "**Current**

Market Rate shall mean the most recent yield on United States Treasury Obligations adjusted to a constant maturity having a term most nearly corresponding to the Measurement Period, in effect two (2) business days prior to the date of prepayment, as published by the Board of Governors of the Federal Reserve System in the Federal Reserve Statistical Release H.15 (519), or by such other quoting service, index or commonly available source utilized by the Bank for such purposes. The present value calculation used herein shall use the Current Market Rate as the discount rate and shall be calculated as if each installment of principal had been made as scheduled pursuant to the terms of this Note.

**Loan Closing and
Conversion Dates:**

The Credit Facilities shall be closed by February 15, 2011, or this Commitment shall immediately become null and void without further notice; provided, however, that Borrower may elect to close Facility 2 and Facility 3 at a later date upon terms reasonably satisfactory to the Lender. As used herein, **"Date of Closing"** and **"Closing"** shall mean that day on which the Lender and the Borrower mutually agree to establish as the date for the closing of the Credit Facilities.

Upon completion of construction of the Project and the funding of all advances available under the Construction Line, as determined pursuant to the provisions of the Loan Agreement and provided no default exists in any of the terms, covenants or conditions of any of the Loan Documents (as hereinafter defined) and each of the conditions to Closing described in this Commitment have been satisfied, the Construction Line will be converted to the Permanent Loan on the Construction Line Conversion Date.

**Loan Documents and
Security for the Loan:**

The Credit Facilities shall be evidenced by promissory notes (the **"Notes"**) and governed and secured by:

- (a) A Loan Agreement (the **"Loan Agreement"**), which Loan Agreement shall be satisfactory in terms, form and substance to the Lender;
- (b) A Business Loan Agreement, which Business Loan Agreement shall be satisfactory in terms, form and substance to the Lender;

- (c) A Leasehold Mortgage (the "**Mortgage**"), which Mortgage shall be a lien upon the unencumbered fee simple title to the Property (the Property shall more fully be described in a legal description to be provided by the Borrower to the satisfaction of the Lender) and a lien and security interest in all personal property owned by the Borrower and relating to or located on the Property, subject in each case only to the prior liens and security interests granted to the Lender and the City of Utica Industrial Development Agency (the "**Permitted Prior Liens**");
- (d) An Assignment of Leases and Rents assigning to the Lender all of the Borrower's right, title and interest in and to all current and future rents, leases, contracts and agreements of the Property and all future leases and guarantees thereof, of all or any portion of the Property, and all rents, security deposits, issues and profits therefrom.
- (e) A Security Agreement pursuant to which the Borrower will grant to the Lender a security interest in all of its business assets, including all furniture, fixtures and equipment located on the Property. Such security interest shall be a perfected security interest in such assets, subject only to the Permitted Prior Liens.
- (f) Uniform Commercial Code Financing Statements filed pursuant to the Mortgage and the Security Agreement.
- (g) Assignments to the Lender of all of Borrower's right, title and interest in and to all present and future architects, construction, service and other contracts relating to the Project.
- (h) Limited personal Guaranty Agreements executed by each of the Personal Guarantors (the "**Personal Guaranty Agreements**") pursuant to which each Personal Guarantor will guarantee the completion of the Project in accordance with the Loan Agreement, and the payment of the Loans and all other obligations to Lender and the performance of each of the Loan Documents and any other documents, instruments and agreements evidencing, creating or governing obligations of Borrower to Lender with respect to the Loans (collectively the "**Lender Obligations**"). The total obligation under each Personal Guaranty Agreement

shall be limited to 21.44% of the Lender Obligations (calculated as of the time of enforcement), plus the costs of collection and enforcement, including attorneys' fees.

- (i) An unlimited Guaranty Agreement executed by the Corporate Guarantor (the "**Corporate Guaranty Agreement**") pursuant to which the Corporate Guarantor will guarantee the payment of the Lender Obligations.
- (j) An Environmental Indemnification Agreement executed by Borrower and each of the Guarantors.
- (k) A Subordination, Non-Disturbance and Attornment Agreement executed by each tenant on the Property, including the Corporate Guarantor.
- (l) Such other documents as may be requested by Lender at or prior to Closing.

All of the foregoing documents together with this Commitment, which shall survive the execution and delivery of the other Loan Documents and remain effective so long as any part of the Loan is unpaid, and the Note and the Loan Agreement shall be known herein as the "**Loan Documents**," which Loan Documents shall be in form, substance and execution acceptable to the Lender.

Loan Closing Documents: Borrower shall furnish the following documentation to the Lender at least five (5) business days prior to Closing Date (except as noted), all in form, substance and execution satisfactory to the Lender and all subject to review, verification and acceptance by Lender:

- (a) Appraisal. Market Value Appraisal of the Property (to be obtained by the Lender at the Borrower's expense). The appraisal must be addressed to Lender and state that the appraisal is being utilized for mortgage purposes for Lender. The appraisal must be completed according to XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and the Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of the Appraisal Foundation. The form and manner of such appraisal shall be determined by Lender and must be acceptable to Lender in its sole discretion, and the findings of such appraisal must be

- acceptable to Lender and its sole discretion. Such appraisal must show an appraised value satisfactory to Lender.
- (b) Lien searches completed before the Closing Dates to be satisfactory to the Lender and covering the Borrower and Guarantors.
 - (c) Plans and Specifications for construction of the Project, satisfactory to the Lender.
 - (d) An itemization of all estimated hard and soft costs for the Project by line item.
 - (e) Construction schedule provided by Borrower and construction supervisor setting forth the approximate commencement and completion dates of all major stages of Project construction; such schedule shall provide that Construction of the Project shall commence after Closing but no later than ninety (90) days after Closing.
 - (f) Evidence satisfactory to the Lender of compliance with all local governmental zoning and building ordinances, receipt of all building permits and governmental approvals necessary for Project, including, without limitation, proof of compliance with all applicable zoning requirements.
 - (g) Survey of the Property (the "Survey") setting forth all existing improvements, easements, rights of way, matters to be shown in Schedule B of the ALTA Policy, and such other matters as the Lender may request showing no current or proposed, encroachments, and certified by a registered engineer or surveyor to Lender.
 - (h) Certified copies of General Contractor's contract and the Architect's Contract and all other contracts related to the construction of the complete Project with assignments to the Lender.
 - (i) A list of all known and contemplated subcontractors with copies of each contract with the General Contractor.
 - (j) An engineering report, satisfactory to the Lender, for the building located on the Property and the Project Costs.

- (k) Evidence of availability to the Property to the storm and sanitary sewers and all utilities.
- (l) An Environmental Assessment Report indicating that the Property is free from risk in the Lender's sole judgment from all hazardous substances, toxic substances or hazardous wastes as defined by any federal, state, or local law, statute, ordinance or regulation and is free of all other contamination which, even if not so regulated, is known to pose a hazard to the health of any person on or about the Property and that the Property is not in a "Wetlands" or "Flood Plain" area, and contains no underground storage tanks. The Lender reserves the right, at Borrower's expense, to retain an independent consultant to review any such evidence submitted by Borrower or to conduct its own investigation or assessment of the Property.
- (m) A Builders Risk Policy for the Property and Project with the Lender named as first mortgage holder in an amount not less than the full Construction Loan Amount.
- (n) Evidence of suitable Owners/Contractors Liability Insurance and, if required, Workers' Compensation Coverage.
- (o) Flood insurance in an amount as Lender may reasonably require if the Property is located in a Flood Hazard Area (to be obtained by Lender at Borrower's expense).
- (p) Commitment for the insurance of ALTA Policy and copies of all items listed in Schedule B thereof.
- (q) Review and approval of Lease agreement between Borrower and the Corporate Guarantor, as well as certified copies of all other leases affecting the Property.
- (r) UCC-3 Termination Statements and other lien releases terminating all security interests and liens on the assets and properties of the Borrower.
- (s) Current financial statements, satisfactory to Lender, for Borrower and the Guarantors, together with authorizations to obtain credit reports with respect to Borrower and the Guarantors.

- (t) Satisfactory evidence of capital contribution to Borrower in the amount of not less than Three Hundred Seventy Thousand Dollars (\$370,000.00).
- (u) Certified copy of Borrower's Articles of Organization, Operating Agreement, Certificate of Good-Standing from the Secretary of State of the State of Organization and Company Resolutions authorizing the company action required with respect to the Loans and the Loan Documents.
- (v) Evidence satisfactory to the Lender in its sole discretion that the Borrower and the Corporate Guarantor have obtained or will obtain all licenses and approvals necessary for the construction and operation of an ambulatory surgery center or office-based surgical facility at the Property.
- (w) The opinion of legal counsel for Borrower and Guarantors that with respect to Borrower and the Guarantors: (a) such legal counsel has not been engaged to represent Borrower or Guarantors with respect to any threatened or pending litigation that might affect the Credit Facilities, the Borrower or Guarantors; (b) the transactions contemplated by this Commitment do not violate any provision of any law, restriction or other document affecting the Borrower or any of the Guarantors; (c) the Loan Documents have been duly executed and delivered, constitute legal, valid and binding obligations of Borrower and are enforceable against the Borrower in accordance with their terms; (d) the Personal Guaranty Agreements and Corporate Guaranty Agreements have been duly executed and delivered, constitute legal, valid and binding obligations of the Guarantors and are enforceable against the Guarantors in accordance with their terms; (e) Borrower is a validly organized and existing company under the laws of the State of New York, that it has the legal capacity to own, develop and operate the Property and to perform its obligations under the Loan Documents, and that the Loans and the Loan Documents have been duly authorized by the Borrower; (f) the Corporate Guarantor is a validly organized and existing company under the laws of the State of New York, that it has the legal capacity to own, develop and operate the Property and to perform its obligations

6. Neither Hospital nor Facility shall be responsible for payment for care rendered by the Hospital or any individual physician to patients transferred from the Facility. Payment for care of patients transferred from the Facility shall be the sole responsibility of the patient and/or patient's third party payer. Notwithstanding the foregoing, patients transferred from the Facility shall be seen and treated without regard to their ability to pay.
7. Nothing in this Agreement is intended, nor should it be construed, as limiting the rights of either party to contract with any third party for the same or similar services.
8. Hospital and Facility shall each maintain a written copy of this Agreement in the appropriate administrator's office to be made available to the Department of Health upon request.
9. This Agreement shall commence on the date that the Facility begins commercial operations and shall be in effect for a period of 12 months thereafter. Thereafter, it shall automatically renew for an unlimited number of additional one-year terms, unless either party provides the other with written notice at least 30 days prior to the expiration of any one-year term that it does not consent to the automatic renewal. Notwithstanding the foregoing, this Agreement may be terminated at any time, with or without cause, by either party upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ST. ELIZABETH MEDICAL CENTER

By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____

Member

6. Neither Hospital nor Facility shall be responsible for payment for care rendered by the Hospital or any individual physician to patients transferred from the Facility. Payment for care of patients transferred from the Facility shall be the sole responsibility of the patient and/or patient's third party payer. Notwithstanding the foregoing, patients transferred from the Facility shall be seen and treated without regard to their ability to pay.
7. Nothing in this Agreement is intended, nor should it be construed, as limiting the rights of either party to contract with any third party for the same or similar services.
8. Hospital and Facility shall each maintain a written copy of this Agreement in the appropriate administrator's office to be made available to the Department of Health upon request.
9. This Agreement shall commence on the date that the Facility begins commercial operations and shall be in effect for a period of 12 months thereafter. Thereafter, it shall automatically renew for an unlimited number of additional one-year terms, unless either party provides the other with written notice at least 30 days prior to the expiration of any one-year term that it does not consent to the automatic renewal. Notwithstanding the foregoing, this Agreement may be terminated at any time, with or without cause, by either party upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

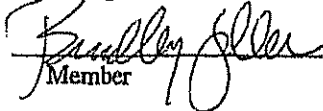
ST. ELIZABETH MEDICAL CENTER

By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: 
Member

ATTACHMENT 4

MOHAWK VALLEY EC, LLC

December 17, 2010

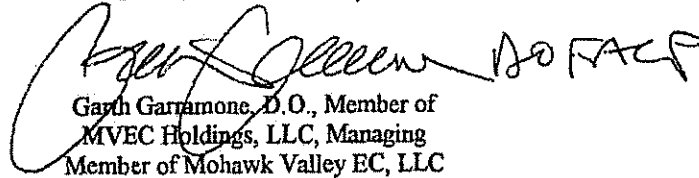
Re: Mohawk Valley Endoscopy Center Staffing Plan

Ladies and Gentlemen:

This letter will confirm that the staff of Mohawk Valley Endoscopy Center, as identified in the attached Schedule 13B, will be employees of Mohawk Valley EC, LLC. Mohawk Valley EC, LLC plans to contract with third parties for certain billing, accounting and maintenance services.

Very truly yours,

MOHAWK VALLEY EC, LLC

 DO FACF

Garth Garramone, D.O., Member of
MVEC Holdings, LLC, Managing
Member of Mohawk Valley EC, LLC

**New York State Department of Health
Certificate Of Need Application**

Schedule 13B

Schedule 13 B. Staffing

Table 13B - 1:

For Establishment and/or Construction Requiring Full/Administrative Review

XX Total Project

___ Subproject number

A	B	C	D
	Number of FTEs to the Nearest Tenth		
Staffing Categories	Current Year	First Year of Implementation (2010/11)	Third Year of Implementation (2012/13)
	(1)	(2)	(3)
1. Management & Supervision	N/A	2.2	2.2
2. Technician & Specialist	N/A	3.0	3.0
3. Registered Nurses	N/A	9.0	11.0
4. Licensed Practical Nurses	N/A	0.0	0.0
Aides, Orderlies & Attendants	N/A	0.0	0.0
6. Physicians	N/A	0.0	0.0
7. PGY Physicians	N/A	0.0	0.0
8. Physicians' Assistants	N/A	0.0	0.0
9. Nurse Practitioners	N/A	0.0	0.0
10. Nurse Midwife	N/A	0.0	0.0
11. Social Workers and Psychologist**	N/A	0.0	0.0
12. Physical Therapists and PT Assistants	N/A	0.0	0.0
13. Occupational Therapists and OT Assistants	N/A	0.0	0.0
14. Speech Therapists and Speech Assistants	N/A	0.0	0.0
15. Other Therapists and Assistants	N/A	0.0	0.0
16. Infection Control, Environment and Food Service	N/A	1.0	1.0
17. Clerical & Other Administrative	N/A	4.0	4.0
18. Other Employee Classifications (please specify)	N/A	N/A	N/A
Accounting	N/A	0.5	0.5
19. TOTAL NUMBER OF EMPLOYEES	0.0	19.7	21.7

* Last complete year prior to submitting application

** Use only for RHCF and D & T Center proposals

ATTACHMENT 5

MOHAWK VALLEY EC, LLC

December 17, 2010

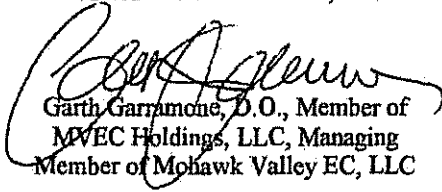
Re: Mohawk Valley Endoscopy Center

Ladies and Gentlemen:

This letter will confirm that the Mohawk Valley Endoscopy Center's clinical space will be used exclusively by Mohawk Valley EC, LLC.

Very truly yours,

MOHAWK VALLEY EC, LLC

 DO FACD

Garth Garramone, D.O., Member of
MVEC Holdings, LLC, Managing
Member of Mohawk Valley EC, LLC

100929000 579

ARTICLES OF ORGANIZATION

OF

MVEC HOLDINGS, LLC

Under Section 203 of the Limited Liability Company Law

RECEIVED

2010 SEP 29 AM 10:14

Filer: Wood & Smith, P.C.
One Lincoln Center, Suite 1110
110 West Fayette Street
Syracuse, New York 13202

Ref. #08C19185

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 29 2010
TAX \$
BY: *[Signature]*

DRAWDOWN
NIS-27

FILED
2010 SEP 29 PM 1:58

[Handwritten initials]

ATTACHMENT 14

**OPERATING AGREEMENT
OF
MVEC HOLDINGS, LLC**

THIS OPERATING AGREEMENT is entered into on October 6, 2010 by and among STANLEY P. WEISELBERG, M.D., NORMAN R. NESLIN, M.D., ROBERT R. PAVELOCK, M.D., BRADLEY F. SKLAR, M.D., RICHARD CHERPAK, M.D., GARTH J. GARRAMONE, D.O., BRETT GANDHI, M.D. and MVEC HOLDINGS, LLC (the "Company").

In consideration of the mutual promises contained herein the parties hereby agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Companies Law, as the same may be amended from time to time.
- 1.2. "Additional Funding Requirement" shall mean additional funds called pursuant to Section 4.2 hereof.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 4.5 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the single-specialty ambulatory surgery center specializing in gastroenterology located at 116 Business Park Drive, Utica, New York 13502 owned and operated by Mohawk Valley EC, LLC.
- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean MVEC Holdings, LLC, a New York limited liability company and its successors.
- 1.10. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP or its successors.
- 1.11. "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.

- 1.12. "Initial Capital Contributions" shall mean the Capital Contributions to be made by the Members as provided in Section 4.1.
- 1.13. "Majority Vote of the Members" shall mean the affirmative vote of a majority of all Members.
- 1.14. "Member" shall mean Stanley P. Weiselberg, M.D., Norman R. Neslin, M.D., Robert R. Pavelock, M.D., Bradley F. Sklar, M.D., Richard Cherpak, M.D., Garth J. Garramone, D.O., Brett Gandhi, M.D. and such other Persons who are admitted to the Company as additional or substitute Members.
- 1.15. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and any right to vote or participate in management of the Company.
- 1.16. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.17. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.18. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.19. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.
- 1.20. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.
- 1.21. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.22. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.23. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.24. "Supermajority Vote of the Members" shall mean the affirmative vote of a number of Members equal to the total number of Members minus two.

- 1.25. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or any part of a Member's Membership Interest.
- 1.26. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.27. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 7.1 hereof.
- 2.2. Name. The name of the Company shall be "MVEC Holdings, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed to (a) own a membership interest in, and to be the Managing Member of Mohawk Valley, EC, LLC and (b) carry on, conduct or transact any business or other activities which a limited liability company formed under the Act may carry on, conduct or transact.

3. MEMBERS; MANAGEMENT OF COMPANY

- 3.1. Membership Interest. The number of Units of Membership Interest owned by each Member and their respective Sharing Ratios is set forth on Exhibit A attached hereto.
- 3.2. Membership Qualifications.
- a. Members shall be natural persons. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**
 - b. Members shall be current or former partners or physician employees of DDM.
- 3.3. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.
- 3.4. Management of the Company. The business and affairs of the Company shall be managed by the Members. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**

3.5. Action by Members.

- a. For voting purposes each Member shall have one vote.
- b. The following actions shall require a Supermajority Vote of the Members: (i) adopt, amend, restate or revoke the Articles of Organization or this Agreement; (ii) approve the dissolution of the Company; (iii) approve the sale, exchange or lease of all or substantially all of the Company's assets; (iv) make a call for Additional Funds under Section 4.2 or require the delivery of personal guaranties under Section 4.4; (v) borrow money or incur expenses in excess of \$50,000; (vi) approve a merger or consolidation of the Company with any other entity; or (vii) admit a new Member.
- c. Except as provided in subsection (b) above or as otherwise required under this Agreement, all other decisions of the Company shall require a Majority Vote of the Members.
- d. No act of a Member shall bind the Company unless such act has been authorized by a sufficient vote of Members as set forth in this Section.

3.6. Action by Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by Members whose voting power is sufficient to authorize such action.

4. **CAPITAL CONTRIBUTIONS**

- 4.1. Initial Capital Contributions. Each Member shall make an Initial Capital Contribution to the Company in the amount set forth on Exhibit A at times and in increments amounts as directed by a Majority Vote of the Members in order to fund the Company's capital contribution obligation to Mohawk Valley EC, LLC.
- 4.2. Additional Funding Requirement. If the Members by a Supermajority Vote of the Members determine that the Company requires additional funds, such funds shall be contributed by the Members in proportion to their Sharing Ratios within 10 days following the date of the call ("Additional Funds"). At the direction of the Members such Additional Funds shall either be in the form of a loan or Capital Contribution to the Company. For purposes of this Agreement, Additional Funds called for under this Section shall be referred to as the "Additional Funding Requirement."
- 4.3. Remedies for Failure to Fund. If any Member shall fail to pay his Initial Capital Contribution or Additional Funding Requirement when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 30 days in which to cure such default. If, after 30 days, the Defaulting Member has not cured such default, then upon a Majority Vote of the Members (excluding the Defaulting Member), the Company may (a) exercise its Right of Termination under Section 6.6; (b) apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) enforce the Defaulting Member's obligation to pay his Initial Capital Contribution or Additional Funding Requirement and recover attorneys' fees and costs of collection in addition to interest at 15% per

annum accruing from the date the Capital Contribution or Additional Funding Requirement was first required to have been paid.

4.4. Personal Guaranties.

- a. Each Member shall execute and deliver one or more guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center (a "Member Guaranty"). If any Member shall fail to deliver his Member Guaranty within 10 days following request, the Company may (a) redeem the Membership Interest of the Defaulting Member for \$1.00 and seek damages against the Defaulting Member or (b) enforce the Member's obligation to deliver his Member Guaranty and recover attorneys' fees.
- b. In the event one or more Members who have delivered a Member Guaranty pays in excess of his share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection. A Member who is not required to deliver a personal guaranty shall not be considered a Nonpaying Member hereunder.

4.5. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.

4.6. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.

4.7. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

- 4.8. Assignment of Membership Interests in Mohawk Valley EC, LLC to the Company. The Members own, in the aggregate, 100% of the membership interest in Mohawk Valley EC, LLC (the "MVEC Membership Interests"). The Members hereby assign to the Company, effective on the date hereof, all of their right, title and interest in and to the MVEC Membership Interests and the Company hereby accepts such assignment.

5. ALLOCATIONS AND DISTRIBUTIONS

- 5.1. Allocation of Net Profits and Net Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.
- 5.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.3. Distributions. Net available cash flow of the Company shall be distributed to the Members at such times and in such amounts as the Members shall determine.
- 5.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 5.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 5.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 5.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 5.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.

- 5.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.
- 5.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.
- 5.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 5.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 5.14. Records, Audits, and Reports. The Company shall maintain records and accounts of all operations and expenditures of the Company.
- 5.15. Returns and Other Elections. The Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Members.

6. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 6.1. Restriction Against Withdrawal. Except as otherwise provided in this Agreement, no Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 6.2. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by a Supermajority Vote of the Members; (b) the proposed transferee satisfies all membership criteria; and (c) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation,

reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:

- a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**
- b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
- c. The transferee shall have adopted and approved in writing this Agreement.
- d. Except for the right to receive allocations of Net Profits and Net Losses and to receive distributions, a transferee of a Membership Interest shall not have a right to become a Member unless approved by a Supermajority Vote of the Members.

6.3. Transferee Not a Member. Notwithstanding anything to the contrary contained in this Agreement, no Person acquiring all or a portion of a Membership Interest shall become a Member unless such person is approved by a Supermajority Vote of the Members.

6.4. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.

6.5. Termination of Membership; Involuntary Withdrawal. The Company shall have the right, which may be exercised at the Company's sole discretion, to terminate the membership of a Member under the circumstances described below (the "Right of Termination"). A termination of a Member's membership under this Section shall be considered an involuntary withdrawal from the Company by such Member. If the Company elects to exercise its Right of Termination, the Company shall provide written notice of such election to the affected Member (the "Terminated Member"), which notice shall set forth the date on which the membership has terminated or will terminate (the "Termination Date"). Effective on the Termination Date, without any further action required by the Terminated Member or the Company (a) the Terminated Member shall cease being a Member of the Company and shall have no further rights under this Agreement except the right to receive a Withdrawal Payment as provided in Section 6.5 hereof and (b) the Terminated Member's Membership Interest, and all rights therein, shall automatically transfer to the Company. A Majority Vote of the Members shall be required to cause the Company to exercise its Right of Termination under this Section.

- a. Right to Terminate if Member Ceases to be a DDM Partner or Employee. If a Member ceases to be a partner or employee of DDM the Company shall have a continuing right to exercise its Right of Termination with respect to such Member. The Termination Date shall be the date

the Member's partnership or employment with DDM terminated or the date he ceased to be a DDM partner or employee, unless a later date is set by the Company. If a Member elects to voluntarily withdraw as a partner of DDM, the Company may exercise its Right of Termination at any time on or after the date on which such Member first notified DDM of his intent to withdraw.

- b. Right to Terminate on Other Events. The Company shall have a continuing right to exercise its Right of Termination with respect to any Member who (i) has been adjudicated a bankrupt, voluntary or involuntary; (ii) has made an assignment for the benefit of creditors; (iii) has applied for a judicial dissolution of the Company under the Act; (iv) is ineligible to own an interest in an Article 28 ambulatory surgery facility; or (v) defaults under this Agreement, which default is not cured within 30 days following written notice.
- 6.6. Withdrawal Payment to Terminated Member. A Member whose membership has been terminated under Section 6.4 shall be entitled to receive a Withdrawal Payment which represents payment for the Member's Membership Interest. The Withdrawal Payment shall be paid within 90 days following the Termination Date (the "Payment Date"). The Withdrawal Payment shall be calculated pursuant to Section 6.7 and paid pursuant to Section 6.8.
- 6.7. Amount of Withdrawal Payment. The Withdrawal Payment shall be determined by multiplying the Company's Adjusted Book Value by the Terminated Member's Sharing Ratio. As used herein, "Adjusted Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Termination Date. Adjusted Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:
- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
 - b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
 - c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
 - d. The Company shall include as an asset 95% of the value of its accounts receivable calculated by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period;
 - e. If the Terminated Member had been a Member of the Company for at least four years following the date the Center began commercial operations, the Company shall also include as an asset a goodwill component (the "Goodwill Component") in an amount equal to one times (1x) the average of the Company's annual net operating income (in accordance with

generally accepted accounting principles), excluding extraordinary gains and losses, calculated before deduction of interest, taxes, depreciation and amortization for the most recent two fully completed prior calendar years; and

- f. If the Company has exercised its Termination Right for any of the reasons set forth in Section 6.4(b)(iii), (iv) or (v), the Withdrawal Payment (i) shall not include the Goodwill Component and (ii) shall be reduced by 30%.
- 6.8. Payment of Withdrawal Payment. The Company shall pay (a) 20% of the Withdrawal Payment by business check on the Payment Date and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the first payment is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 60 equal consecutive monthly installments of principal and interest commencing 90 days following the Payment Date. The promissory note shall be unsecured and shall provide that in case of default all principal and accrued interest shall become immediately due and payable at the holder's election. The Company shall have the right to set off any amounts owing by the Terminated Member to the Company against the Withdrawal Payment. Notwithstanding the terms of the promissory note, the Company, by a Supermajority Vote of the Members, may defer all or a part of the payments due thereunder if such payments, combined with Withdrawal Payments owing by the Company to other Terminated Members, exceed 25% of the Company's net cash flow available for distribution on an annual basis. All deferred payments shall accrue interest at 10% per annum and shall be paid in full not later than two years following the original maturity date of the promissory note.
- 6.9. Release of Personal Guaranties. If the Terminated Member signed any personal guaranty on behalf of the Company, the Company shall use its best efforts to obtain a release of such guaranty(ies). If the Company is unable to obtain a release, the Company and the remaining Members shall indemnify the Terminated Member against any liability arising out of such guaranty.

7. DISSOLUTION AND TERMINATION

- 7.1. Dissolution of the Company. The Company may be dissolved by a Supermajority Vote of the Members.
- 7.2. Procedure on Liquidation. Upon the dissolution of the Company, the Members shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 7.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.

- 7.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:
- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
 - b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;
 - c. Third, to Members in accordance with their positive Capital Account balances.

8. INDEMNIFICATION

- 8.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company may maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.
- 8.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 8.1.

9. DISPUTE RESOLUTION

- 9.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.


10. GENERAL PROVISIONS


- 10.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.
- 10.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.
- 10.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 10.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 10.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 10.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 10.7. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.

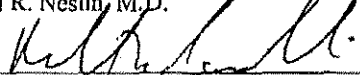
- 10.8. Waiver of Action for Partition. Each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 10.9. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.
- 10.10. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 10.11. Agreement Prepared by Attorney for Company. The parties each agree that the Company's counsel has prepared this Agreement in the course of its representation of the Company and not as counsel to any individual Member. The Company's counsel has advised the Company that interests of the Members may be adverse in certain circumstances. By its signature below, each Member confirms that he has either obtained the advice of separate counsel with respect to this Agreement or has independently evaluated the need for separate counsel and has knowingly elected not to retain same.

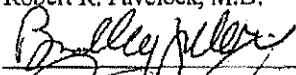
[Signatures on following page]

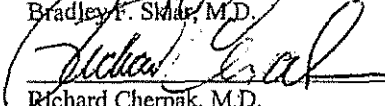
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

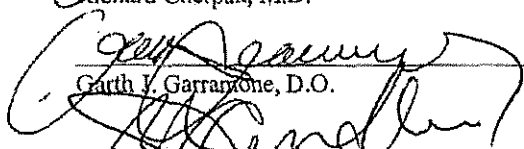

Stanley P. Weiselberg, M.D.

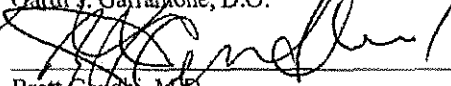

Norman R. Neslin, M.D.


Robert R. Pavelock, M.D.


Bradley F. Sklar, M.D.


Richard Cherpak, M.D.


Garth J. Garrapone, D.O.


Brett Gandhi, M.D.

MVEC HOLDINGS, L.L.C.


By: 
Member

EXHIBIT A

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
Stanley P. Weiselberg, M.D. [REDACTED]	[REDACTED]	100	14.2858%
Norman R. Neslin, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Robert R. Pavelock, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Bradley F. Sklar, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Richard Cherpak, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Garth J. Garramone, D.O. [REDACTED]	[REDACTED]	100	14.2857%
Brett Gandhi, M.D. [REDACTED]	[REDACTED]	100	14.2857%

ARCHITECTURAL SUBMISSION

187 East Market Street
Suite 180
Rhinebeck NY 12572

845 876 8202
845 876 8112 fax
optimusarchitecture.com



14 December 2010

NYS Department of Health/Office of Health Systems Management
Division of Health Facility Planning
Bureau of Architectural and Engineering Facility Planning
433 River Street, 6th Floor Troy, New York 12180-2299

Re: Project #: 092142B
Name: Mohawk Valley EC, LLC
Location: 116 Business Park Drive, Utica, NY 13502
Description: Construct a new endoscopy procedure facility.

Dear Mr. Thomas Jung:

This is to certify that under the terms of my contract for the above-named facility to provide services to design and prepare working drawings and specifications, and as applicable to make periodic visits to the site during construction and perform such other required services to familiarize myself with the general progress, quality and conformance of the work, I have ascertained that to the best of my knowledge, information and belief: the completed structure will be designed, and constructed, in accordance with plans and specifications consistent with the referenced CON as approved by the New York State Department of Health, and in substantial compliance with the applicable provisions of the State Hospital Code (10 NYCRR) which were in effect at the time this project was approved.

I understand that upon completion of construction, the costs of any subsequent corrections necessary to achieve compliance with the requirements of Part 711 of this Title, when the prior work was not completed properly as certified herein, may not be considered allowable costs for reimbursement under Part 86 of NYCRR Title 10. I ascertain that I have read and understood the conditions of Part 710 of 10 NYCRR.

This certification is being submitted in lieu of a formal plan approval by your office. It is understood that final Construction Documents for record purposes only must still be submitted for all Full and Administrative Reviews.

12.14.2010

Date

A handwritten signature in black ink, appearing to read "David A. Souers".

David A. Souers, AIA, ACHA, ASHE
Professional NYS License No. 017367-1

12.16.2010

Date

A handwritten signature in black ink, appearing to read "Margaret M. Alteri".

Peggy Alteri, Interim Administrator
Mohawk Valley EC, LLC

**HOSPITAL PROGRAM MANUAL
PROCEDURE
CONSTRUCTION
START OF CONSTRUCTION - SHC710.7**

To: Thomas M. Jung-Director
Bureau of Architectural and
Engineering Facility Planning
433 River Street, Suite 303
Troy, New York 12180-2299

Re: Project No. 092142B
Facility: Mohawk Valley EC, LLC
County: Oneida County
(Description of Scope Approval)
Construct a new endoscopy procedure facility

I request approval for the start of construction on the above project.

Upon receipt of this letter containing the department's approved costs noted herein, it is understood that the applicant will be advised in writing that approval to commence construction has been granted. The signatures of the facility's Chief Executive Officer, the Project Architect and the Construction Manager will serve to verify that the project is consistent with approved scope of work and previously approved planning documents. Further, the completed project will comply with the State Hospital Code, NFPA Life Safety Code (101), local codes and other applicable codes.

I understand that the maximum cost recognized for the Capital Cost component of the reimbursement rate, regardless of any future cost over-run will be:

1.1 Land Acquisition	\$ _____
1.2 Building Acquisition	\$ _____
2.1 New Construction	\$ _____
2.2 Renovation & Demolition	\$ <u>1,852,750</u>
2.3 Site Development	\$ _____
2.4 Temporary Power	\$ _____
2.5 Asbestos Abatement or Removal	\$ _____
3.1 Design Contingency	\$ <u>173,275</u>
3.2 Construction Contingency	\$ <u>173,275</u>
4.1 Fixed Equipment (NIC)	\$ _____
4.2 Planning Consultant Fees	\$ <u>140,000</u>
4.3 Architect / Engineering Fees	\$ <u>200,000</u>
4.4 Construction Manager Fees	\$ _____
4.5 Other Fees (Consultant etc.)	\$ <u>182,000</u>
Subtotal (total 1.1 thru 4.5)	\$ <u>2,679,300</u>
5.1 Movable Equipment	\$ <u>1,300,000</u>
6.0 Total Basic Cost of Construction (Total 1.1 thru 5.1)	\$ <u>3,979,300</u>
7.1 Financing Costs (Points, etc.)	\$ _____
7.2 Interim Interest Expense	\$ _____
8.0 Total Project Costs	\$ _____
9.1 Application Fee	\$ <u>2,000</u>
9.2 Additional Processing Fee	\$ <u>21,446</u>
10 Total Project Cost with CON fees	\$ <u>4,022,746</u>

Construction will start on _____ for a period of _____ months and be completed on _____.

PRINT & SIGN: Bullley J. Jung DATE: 12/24/2010
(Applicant)
[Signature] DATE: 12/20/2010
(Architect/Engineer)
[Signature] DATE: 12/21/2010
(Construction Manager)

187 East Market Street
Suite 180
Rhinebeck NY 12572

845 876 8202
845 876 8112 fax
optimusarchitecture.com



14 December, 2010

Mr. Jeffrey Rothman, M.S., M.B.A.
Project Management Group
Division of Health Facility Planning
Office of Health Systems Management
New York State Department of Health
433 River Street, 6th Floor
Troy, New York 12180-2299

Re: Project #: 092142B
Name: Mohawk Valley EC, LLC
Location: 116 Business Park Drive, Utica, NY 13502
Description: Construct a new endoscopy procedure facility.

Dear Mr. Jeffrey Rothman;

The attached page itemizes our responses to the contingencies/conditions of approval for the above referenced project. Please utilize it to satisfy the requirements of the Department of Health and feel free to contact us should we be of further assistance.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "David A. Souers", with a long, sweeping horizontal stroke extending to the right.

David A. Souers, AIA, ACHA, ASHE
Professional NYS License No. 017367-1

	CONTINGENCY	RESPONSE
7.	Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities.	Signage will be provided in a building directory and at the entrance to Mohawk Valley EC. This will clearly denote that the center is separate and distinct from other adjacent entities.
8.	Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space.	Entrance to Mohawk Valley EC is directly from the building lobby, and does not disrupt nor impact any other tenant or program in the building. A plan describing entry was provided with CON application.

	CONDITIONS	RESPONSE
1.	The submission of State Hospital Code Drawings for review and approval, as described in BARFP Drawing Submission Guidelines DSG-01	A CD disk of completed construction drawings is herewith provided.
2.	The submission of Final Documents, as described in BARFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction.	A CD disk of completed construction drawings is herewith provided with a request to start construction.
3.	The applicant shall complete construction by August 1, 2011. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10 (a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner.	Construction is expected to start immediately with DOH permission to start construction, and will be completed by August 1, 2011 pending DOH's permission to start construction by January 1, 2011.

balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.

- 7.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.
- 7.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 7.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 7.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 7.14. Returns and Other Elections. The Managing Member shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Managing Member.
- 7.15. Audited Financial Statements. The Company shall cause its financial statements to be audited annually by the Company's accounting firm.

8. BOOKS AND RECORDS

- 8.1. Books and Records. The Company shall keep and maintain at its principal office adequate books and records setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company. Any Member or its designated representative shall have the right, at any reasonable time and at its own expense to have access to and inspect and copy the contents of such books or records.
- 8.2. Reports. Within a reasonable period after the end of each quarter, each Member shall be furnished with a report containing a balance sheet as of the end of such quarter and statement of earnings. Annually, the Members will receive a balance sheet, statement of earnings, and changes in Member's equity and statement of cash flow for the year ended.
- 8.3. Tax Information. Necessary tax information shall be delivered to each Member as soon after the end of each fiscal year of the Company as is practicable, but no later than April 1.

9. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 9.1. Covenant Against Withdrawal. Except for Permitted Withdrawals, no Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 9.2. Permitted Withdrawals by Hospital Members. Upon the occurrence of any regulatory development, investigation, audit or other ruling which makes the ownership of a Membership Interest by a Hospital Member illegal under the federal anti-kickback statute, the Stark law and regulations or some other federal or state law affecting joint ventures or upon the occurrence of any regulatory development, investigation, audit or other ruling which causes the Hospital Member's ownership of its Membership Interest to jeopardize its tax-exempt status for its continued participation in the joint venture, the affected Hospital Member or Members may withdraw upon providing 90 days advance written notice to the Company. Upon such withdrawal the Managing Member shall purchase the Membership Interest of the withdrawing Hospital Member at the price and on the terms set forth in Sections 9.7 and 9.8 below.
- 9.3. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by the Managing Member and the Hospital Members and (b) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation, reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:
- a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law.
 - b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
 - c. The transferee shall have adopted and approved in writing this Agreement.
- 9.4. Permitted Transfers. Holdings shall have the unrestricted right to Transfer Units to one or more its members at such price and on such terms as Holdings may determine. Upon such Transfer and subject to the satisfaction of the requirements set forth in Section 9.3, such transferees shall automatically become a Member. Holdings acknowledges that its operating agreement requires its members to be current or former partners or employed physicians of DDM.
- 9.5. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.

- 9.6. Option to Purchase Membership Interest. If any Member (i) is adjudicated a bankrupt, voluntary or involuntary; (ii) makes an assignment for the benefit of creditors; (iii) applies for a judicial dissolution of the Company under the Act; (v) is no longer eligible to own an interest in an Article 28 ambulatory surgery center; or (vi) fails to timely fund its Capital Contribution obligation;; (each, a "Triggering Event"), such Member (an "Offering Member") shall be deemed to have offered to sell its entire Membership Interest to the Company (if the Offering Member is a Hospital Member it shall be deemed to have offered to sell its entire Membership Interest to the other Hospital Member) on the following terms:
- a. The option to purchase shall be exercised not later than 180 days following notice of any such Triggering Event.
 - b. The purchase price shall be established pursuant to Section 9.7 and paid in the manner provided in Section 9.8.
- 9.7. Calculation of Purchase Price. The purchase price for a Member's Membership Interest purchased by the Company or the Managing Member hereunder (the "Purchase Price") shall be determined by multiplying the Company's Book Value by the selling Member's Sharing Ratio; provided, however, that if the purchase is being made under Section 9.6 the Purchase Price shall be reduced by 30%. As used herein, "Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Triggering Event. Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:
- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
 - b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
 - c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
 - d. The Company shall include as an asset 100% of the value of its accounts receivable valued by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period; and
 - e. There is no goodwill in the Company, and no value shall be claimed for or attributed to it in determining the Purchase Price.

- 9.8. Payment of Purchase Price. The Purchase Price shall be paid as follows: (a) 20% in certified funds at closing and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the cash portion of the Purchase Price is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 36 equal consecutive monthly installments of principal and interest commencing 30 days following the closing date. The promissory note shall be unsecured and shall provide that in case of default all principal and accrued interest shall become immediately due and payable at the holder's election. If the Company is the purchaser it shall have the right to set-off any amounts owing by the Member to the Company against the Purchase Price.
- 9.9. Closing. The closing of the purchase of a Membership Interest hereunder shall take place at the principal office of the Company. At closing the purchaser shall deliver the Purchase Price and the selling Member shall execute and deliver assignments legally sufficient to transfer the Membership Interest free and clear of all taxes, debts, claims, liens or encumbrances. The closing shall occur on the date designated by the Company.
- 9.10. Power of Attorney. Each Member appoints the Company as its agent and attorney-in-fact to execute and deliver all documents needed to convey its Membership Interest, if such selling Member is not present at the closing. This power of attorney is coupled with an interest.

10. DISSOLUTION AND TERMINATION

- 10.1. Dissolution of the Company. The Company may be dissolved by the Managing Member.
- 10.2. Procedure on Liquidation. Upon the dissolution of the Company, the Managing Member shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 10.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.
- 10.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:
- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
 - b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;

- c. Third, to Members in accordance with their positive Capital Account balances.

11. INDEMNIFICATION

11.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Managing Member or a Hospital Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Managing Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company shall maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

11.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 11.1.

12. DISPUTE RESOLUTION

12.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

13. GENERAL PROVISIONS


- 13.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.
- 13.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.
- 13.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 13.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 13.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 13.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 13.7. Governing Law. This Agreement shall be governed by and construed in accordance, with the laws of the State of New York, with venue of any suit, action, or legal proceeding arising under, or relating to this Agreement being in a court of competent jurisdiction located in Oneida County, New York.
- 13.8. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.
- 13.9. Waiver of Action for Partition. In addition to being subject to Section 607 of the Act, each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 13.10. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.

- 13.11. Contract Modifications for Prospective Legal Events. In the event any state or Federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party hereto in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, the Members shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements among the Members.
- 13.12. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 13.13. Classification as Partnership. The Company intends to be classified as a partnership for Federal income tax purposes only. The Members agree to take such actions, make such elections and, if required, amend this Operating Agreement to assure that such classification is maintained.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: 
Member

RAXTON ST. LUKE'S HEALTHCARE

By: _____

Title: _____

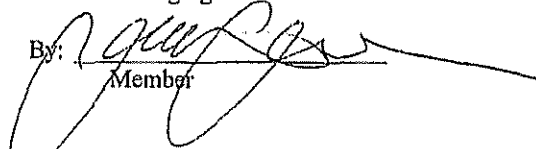
ST. ELIZABETH MEDICAL CENTER

By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: 
Member

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: _____
Member

FAXTON ST. LUKE'S HEALTHCARE

By: *Scott H. Perra*
Title: Scott H. Perra, FACHE
President/CEO

ST. ELIZABETH MEDICAL CENTER

By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: _____
Member

FAXTON ST. LUKE'S HEALTHCARE

By: _____

Title: _____

ST. ELIZABETH MEDICAL CENTER

By: Amber Kerkhan

Title: President CEO

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

EXHIBIT A

<u>Member</u>	<u>Maximum Capital Contrib. Obligation</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
MVEC Holdings, LLC	\$660,000	60	60%
Faxton St. Luke's Healthcare	\$220,000	20	20%
St. Elizabeth Medical Center	<u>\$220,000</u>	<u>20</u>	<u>20%</u>
	\$1,100,000	100	100%

The Members shall make the following Capital Contributions within 10 days following the Effective Date of this Agreement:

MVEC Holdings, LLC: \$600,000
Faxton St. Luke's Healthcare: \$200,000
St. Elizabeth Medical Center: \$200,000

If required in connection with the construction of the Center, the Members shall pay the balance of their maximum Capital Contribution obligation within 10 days following request by the Managing Member.

ATTACHMENT 13

FILING RECEIPT

=====

ENTITY NAME: MVEC HOLDINGS, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ONEI

=====

FILED:09/29/2010 DURATION:***** CASH#:100929000626 FILM #:100929000579

FILER:

EXIST DATE

WOOD & SMITH, P.C.
ONE LINCOLN CENTER SUITE 1110

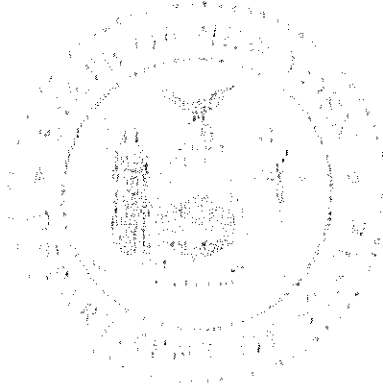
09/29/2010

SYRACUSE, NY 13202

ADDRESS FOR PROCESS:

THE LLC
110 BUSINESS PARK DRIVE
UTICA, NY 13502

REGISTERED AGENT:



=====

SERVICE COMPANY: NATIONWIDE INFORMATION SERVICES, INC. SERVICE CODE: 27 *

FEES	235.00	PAYMENTS	235.00
FILING	200.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	235.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

=====

08C19185

DOS-1025 (04/2007)

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on September 30, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

100929000

579

ARTICLES OF ORGANIZATION
OF
MVEC HOLDINGS, LLC

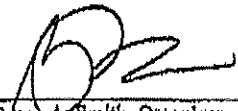
Under Section 203 of the Limited Liability Company Law

- 1. The name of the limited liability company is: MVEC Holdings, LLC
- 2. The office of the limited liability company is to be located in the County of Oneida, State of New York.
- 3. The Secretary of State is designated as agent of the limited liability company 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 limited liability company served upon the Secretary is:

o/o the Company
110 Business Park Drive
Utica, New York 13502

- 4. The limited liability company shall be managed by its members.
- 5. All members of the limited liability company shall be natural persons and this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.
- 6. Transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-(4)(b) of the Public Health Law and this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

IN WITNESS WHEREOF, these Articles of Organization have been subscribed to this 28th day of September 2010 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.



Bruce A. Smith, Organizer
Wood & Smith, P.C.
One Lincoln Center, Suite 1110
110 West Fayette Street
Syracuse, New York 13202

MOHAWK VALLEY ENDOSCOPY CENTER MEDICAL STAFF PROTOCOL

1. All members of the Mohawk Valley Endoscopy Center Medical Staff shall be a member in good standing on the active medical staff of at least one acute care hospital.
2. As a condition to becoming a member of the Mohawk Valley Endoscopy Center Medical Staff each physician shall, in writing, (a) identify each acute care hospital at which he or she maintains medical staff privileges; (b) represent that he or she is a member in good standing on such medical staff or staffs; (c) agree to notify Mohawk Valley Endoscopy Center promptly in the event that such physician is no longer a member in good standing on such medical staff or staffs; and (d) authorize Mohawk Valley Endoscopy Center to request from each acute care hospital confirmation that the physician is in good standing on its medical staff.

ATTACHMENT 8

REPORTING AGREEMENT

THIS AGREEMENT is entered into on December 10, 2010 by and between MOHAWK VALLEY EC, LLC ("MVEC") and MMAE, LLC ("MMAE").

RECITALS:

A. MVEC's application to establish and construct a single specialty ambulatory surgery center at 116 Business Park Drive, Utica, New York (the "Surgery Center") has been approved by New York Public Health Council subject to the satisfaction of certain contingencies including, without limitation, entering into an agreement with an outside independent agency to provide certain reports to the Department of Health.

B. MMAE is a limited liability company whose sole member is Margaret Alteri who has over 20 years of experience in the operation of free-standing ambulatory surgery centers and is independent of MVEC.

C. The parties wish to enter into this Agreement to provide for the satisfaction of MVEC' reporting requirements to the Department of Health.

NOW, THEREFORE, the parties agree as follows:

1. Services. During the term of this Agreement MMAE shall provide the following annual reports to the Department of Health beginning the second year of operation of the Surgery Center:
 - a. Data showing actual utilization including procedures;
 - b. Data showing breakdown of visits by payer source;
 - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided; and
 - f. Number of nosocomial infections recorded during the year in question.
2. Access to Data. MVEC shall provide MMAE with access to all data required for MMAE's timely preparation and submission of the annual reports to the Department of Health.
3. Compensation. MVEC shall pay MMAE \$500 plus reasonable out of pocket expenses payable within 10 days following delivery of an invoice and MMAE's completion and submission of the annual report.
4. Term and Termination. Either party shall have the right to terminate this Agreement at any time upon providing 30 days prior written notice to the other party.

5. Performance of Services. Unless otherwise agreed by the parties all services to be provided by MMAE hereunder shall be provided by Margaret M. Alteri or by an individual supervised by her.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: 
Member

MMAE, LLC

By: _____
Margaret M. Alteri, President

5. Performance of Services. Unless otherwise agreed by the parties all services to be provided by MMAE hereunder shall be provided by Margaret M. Alteri or by an individual supervised by her.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

MMAE, LLC

By: Margaret M. Alteri
Margaret M. Alteri, President

ATTACHMENT 9

**ORGANIZATIONAL MISSION STATEMENT
OF
MOHAWK VALLEY ENDOSCOPY CENTER**

Unanimously Adopted by Mohawk Valley EC, LLC Members

Mohawk Valley Endoscopy Center has been formed, and will be operated to help meet the needs of all patients in our community by providing convenient, specialized and high-quality endoscopy services. Mohawk Valley Endoscopy Center will provide services to individuals regardless of the individual's ability to pay for such services and will accept all sources of payment, including Medicare and Medicaid. Mohawk Valley Endoscopy Center will develop policies and procedures to assure that charity care is available to those who cannot afford to pay.

ATTACHMENT 10

MOHAWK VALLEY EC, LLC

October 27, 2009

State of New York Health Department
Corning Tower
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12237

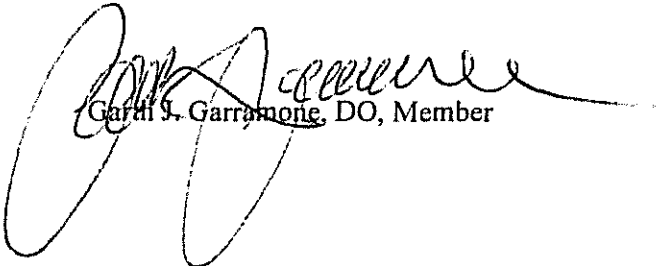
Re: Mohawk Valley EC, LLC

Ladies and Gentlemen:

This letter will confirm that in structuring the Mohawk Valley EC, LLC ambulatory surgery center project we have considered with our legal counsel both the Federal and New York State anti-kickback and self-referral laws. On this basis we have concluded that proceeding with the project is appropriate.

Very truly yours,

MOHAWK VALLEY EC, LLC


Garth J. Garramone, DO, Member

ATTACHMENT 11

**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 214 of the Limited Liability Company Law

1. The name of the limited liability company (the "Company") is Mohawk Valley EC, LLC.
2. The date of the filing of the Articles of Organization is October 15, 2009.
3. The amendments effected by this Amended and Restated Articles of Organization are as follows:
 - a. To specify the address of the principal office of the Company;
 - b. To subject any change in the management structure of the Company to the prior approval of the New York State Department of Health;
 - c. To limit the powers and purposes of the Company to the ownership and operation of a single specialty ambulatory surgery center providing endoscopy services licensed pursuant to New York Public Health Law Article 28; and
 - d. To subject changes to membership interests and voting rights in the Company to the provisions set forth in New York Public Health Law Section 2801-a(4)(b).
4. To accomplish amendment 3(a), as stated above, Article 2 of the Articles of Organization is hereby amended to read as follows :

"2. The principal office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502."
5. To accomplish amendment 3(b), as stated above, Article 4 of the Articles of Organization of the Company is hereby amended to read as follows:

"4. The Company shall be managed by its Members. Neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the approval of the New York Department of Health."
6. To accomplish amendment 3(c), as stated above, a new Article 5 of the Articles of Organization is hereby added to read as follows:

"5. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center exclusively providing gastroenterology services licensed under Article 28 of the Public Health Law known as "Mohawk Valley Endoscopy Center" located at 116 Business Park Drive, Utica, New York 13502."
7. To accomplish amendment 3(d), as stated above, a new Article 6 of the Articles of Organization is hereby added to read as follows:

"6. Notwithstanding anything in the articles of organization or operating agreement to the contrary, any transfer, assignment or other disposition of any membership interest

or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.”

8. The Articles of Organization are hereby restated to set forth its entire text as amended:

**ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 203 of the Limited Liability Company Law

1. The name of the limited liability company (the “Company”) is: Mohawk Valley EC, LLC.
2. The principal office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502.
3. The Secretary of State is designated as agent of the Company 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 Company served upon the Secretary is:

c/o the Company
110 Business Park Drive
Utica, New York 13502

4. The Company shall be managed by its Members. Neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the approval of the New York Department of Health.
5. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center exclusively providing gastroenterology services licensed under Article 28 of the Public Health Law known as “Mohawk Valley Endoscopy Center” located at 116 Business Park Drive, Utica, New York 13502.
6. Notwithstanding anything in the Articles of Organization or Operating Agreement to the contrary, any transfer, assignment or other disposition of any membership interest or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.

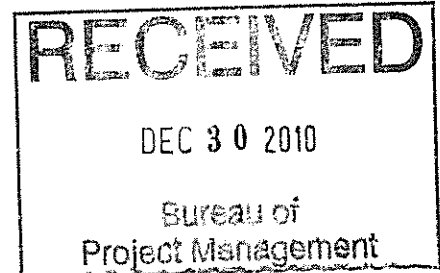
IN WITNESS WHEREOF, these Amended and Restated Articles of Organization have been subscribed this 17th day of October, 2010.

MVEC HOLDINGS, LLC,
Managing Member of Mohawk Valley EC, LLC

By: 
Bradley Sklar, M.D., Member

December 27, 2010

Bureau of Project Management
Division of Health Facility Planning
Office of Health Systems Management
New York State Department of Health
433 River Street, 6th Floor
Troy, NY 12180-2299



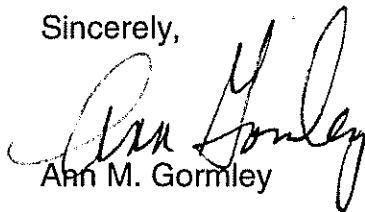
RE: CON#092142-B Mohawk Valley EC, LLC

Dear Mr. Rothman:

Enclosed is a certified check for \$21,466 and three copies of the documentation that addresses the contingencies for the above mentioned application.

Please contact me as soon as possible if any further information is required. We appreciate your assistance with this finalizing this application.

Sincerely,


Ann M. Gormley

Mohawk Valley EC, LLC
Department of Health Contingencies

	CONTINGENCY	RESPONSE
1.	Submission of check to NYSDOH for the amount enumerated in the approval letter.	Check for \$21,466 is enclosed.
2.	Submission of a bank loan commitment for the applicant's financing acceptable to the Department	Attachment 1
3.	Submission of a working capital loan commitment acceptable to the Department.	Attachment 1
4.	Submission of equipment leases acceptable to the Department	Attachment 2
5.	Submission of an executed transfer and affiliation agreement that is acceptable to the Department with a local acute care hospital.	Attachment 3
6.	Submission of a staffing plan, acceptable to the Department, confirming that staff of the Center will be separate and distinct from staff of other entities.	Attachment 4
7.	Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities.	Signage will be provided in a building directory and at the entrance to Mohawk Valley EC. This will clearly denote that the center is separate and distinct from other adjacent entities.
8.	Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space.	Entrance to Mohawk Valley EC is directly from the building lobby, and does not disrupt nor impact any other tenant or program in the building. A plan describing entry was provided with the CON application.
9.	Submission of documentation, acceptable to the Department, that the clinical space will be used exclusively for this purpose.	Attachment 5
10.	Submission of an agreement, acceptable to the Department, regarding the provision of quality oversight functions.	Attachment 6
11.	Submission of evidence of a protocol ensuring all physicians practicing at the ASC commit, in writing, to maintain in good standing any responsibilities with all acute care hospitals where privileges have been granted.	Attachment 7



	CONTINGENCY	RESPONSE
12.	Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department beginning in the second year of operation.	Attachment 8
13.	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, and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay.	Attachment 9
14.	Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws; with consultation of the legal counsel. And it is concluded that proceeding with the proposal is acceptable.	Attachment 10
15.	Submission of a photocopy of the applicant's executed proposed amended and restated articles of organization, which is acceptable to the Department.	Attachment 11
16.	Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department.	Attachment 12
17.	Submission of a photocopy of MVEC Holdings, LLC's executed proposed articles of organization, which is acceptable to the Department.	Attachment 13



	CONTINGENCY	RESPONSE
18.	Submission of a photocopy of MVEC Holdings, LLC's executed proposed operating agreement, which is acceptable to the Department.	Attachment 14

	CONDITIONS	RESPONSE
1.	The submission of State Hospital Code Drawings for review and approval, as described in BARFP Drawing Submission Guidelines DSG-01	A CD of completed construction drawings is herewith provided.
2.	The submission of Final Documents, as described in BARFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction.	A CD of completed construction drawings is herewith provided with a request to start construction.
3.	The applicant shall complete construction by August 1, 2011. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10 (a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner.	Construction is expected to start immediately with DOH permission to start construction, and will be completed by August 1, 2011 pending DOH's permission to start construction by January 1, 2011.



ATTACHMENT 1



233 Genesee Street, Utica, NY 13501
CNY Business & Professional Banking

December 21, 2010

Mohawk Valley EC, LLC
116 Business Park Drive
Utica, New York 13502

Gentlemen:

Manufacturers and Traders Trust Company, a New York banking corporation, (hereinafter called "**Lender**") hereby offers, subject to the hereinafter described conditions (the "**Commitment**"), to make the following-described credit facilities (the "**Credit Facilities**"):

Borrower: Mohawk Valley EC, LLC (the "**Borrower**").

Guarantors: Digestive Disease Medicine of Central New York, LLP and 116 Business Park Associates, LLC (collectively, the "**Corporate Guarantor**") and Richard Cherpak, MD, Bradley Sklar, MD, Robert Pavelock, MD, Garth Garramone, MD, Brett Gandhi, MD, Norman Neslin, MD and Stanley Weiselberg, MD (the "**Personal Guarantors**") (hereinafter referred to collectively as the "**Guarantors**").

Credit Facilities: Facility 1: A construction line/permanent mortgage term loan in the amount of up to One Million Seven Hundred Twenty Thousand Dollars (\$1,720,000.00), or so much thereof as may be advanced from time to time to or for the benefit of the Borrower subject to the terms and conditions of a construction loan agreement, which must be in form, substance and execution satisfactory to the Lender (the "**Loan Agreement**"). The proceeds of the construction line made available under Facility 1 (the "**Construction Line**") are to be used solely and only for the purpose of providing mortgage financing for the interior and exterior renovations by Borrower of a commercial building on real property located at 116 Business Park Drive, Utica, New York to construct a surgical ambulatory center or office based surgical facility (such real property together with all buildings and other improvements now thereon or to be constructed thereon and easements and right of ways appurtenant thereto are referred to herein as the "**Property**") in accordance with the Plans and Specifications approved by the Lender as provided herein (the "**Project**") and to pay such related expenses and costs thereof and hereof as shall be approved by Lender (the "**Project Costs**"). Subject to the terms and conditions set forth in this Commitment,

upon the completion of the Project and the final advance under the Construction Line, as determined pursuant to the Loan Agreement, the Construction Line shall be converted to a permanent mortgage loan (the "**Permanent Loan**"). As used herein, "**Construction Line Conversion Date**" shall mean that date on which the Construction Line is converted to the Permanent Loan. The Permanent Loan proceeds are to be used solely and only for the purpose of refinancing the Construction Line and providing permanent mortgage financing for the Property.

Facility 2: A multi-disbursement term loan in the amount of Five Hundred Thousand Dollars (\$500,000.00), or so much thereof as may be advanced from time to time to or for the benefit of the Borrower subject to the terms and conditions of the Loan Agreement (as hereinafter defined). The proceeds of Facility 1 are to be used solely and only for the purpose of providing financing for the purchase of furniture, fixtures and equipment by Borrower for the ambulatory surgery center or office-based surgical facility to be operated by Borrower (or its affiliate) at the Property.

Facility 3: A multi-disbursement term loan in the amount of Two Hundred Twenty Thousand Dollars (\$220,000.00), or so much thereof as may be advanced from time to time to or for the benefit of the Borrower subject to the terms and conditions of the Loan Agreement (as hereinafter defined). The proceeds of Facility 2 are to be used solely and only for the purpose of providing permanent working capital.

Subject to the terms and conditions set forth in this Commitment and as determined pursuant to the Loan Agreement, upon the expiration of the six month period following the date first advances are made under Facility 2 and Facility 3 shall be converted to term loans. As used herein, "**Second Conversion Date**" shall mean that date on which such advances are converted to term loans.

Interest:

Facility 1: The loans made under Facility 1 shall bear interest at the Lender's Prime Rate plus 100 basis points and such rate shall be adjusted with each adjustment of the Lender's Prime Rate. As of the Construction Line Conversion Date, the interest rate for Facility 1 (the "**Permanent Loan Interest Rate**") shall be fixed, at Borrower's election, exercised by written notice to the Lender delivered not less than two (2) business days prior to the Date of Closing, at (i) the fixed rate per annum equal to 300 basis points above the rate determined by the Lender to be its Cost of Funds.

based on obligations adjusted to a constant maturity of five (5) years in effect two (2) Business Days prior to the Construction Line Conversion Date (such option is referred to as "**Permanent Loan Option 1**"), or (ii) the fixed rate per annum equal to 325 basis points above the rate determined by the Lender to be its Cost of Funds based on obligations adjusted to a constant maturity of ten (10) years in effect two (2) Business Days prior to the Construction Line Conversion Date (such option is referred to as "**Permanent Loan Option 2**"). Provided that the Lender does not exercise a Call Option (as hereinafter defined) on the anniversary of the Construction Line Conversion Date occurring 60 months from the Construction Line Conversion Date (the "**First Interest Adjustment Date**") or one hundred twenty (120) months from the Construction Line Conversion Date (the "**Second Interest Rate Adjustment Date**"), the interest rate under Permanent Loan Option 1 shall be adjusted as of the First Interest Adjustment Date and the Second Interest Adjustment Date and the interest rate under Permanent Loan Option 2 shall be adjusted as of the Second Interest Adjustment Date, in each case, to a rate to be determined and agreed upon by the Lender and Borrower in a written agreement signed by both parties and accepted by the Lender prior to such date. Interest on the Permanent Loan will be calculated on the basis of a 360-day year consisting of twelve (12) months with the actual number of days of each month (28, 29, 30, or 31).

Facility 2: The loans made under Facility 2 shall bear interest at a variable rate of interest equal to the Lender's Prime Rate plus 100 basis points and such rate shall be adjusted with each adjustment of the Lender's Prime Rate. As of the Second Conversion Date, the interest rate for Facility 1 shall be fixed at 325 basis points above the rate determined by the Lender to be its Cost of Funds based on obligations adjusted to a constant maturity of seven (7) years in effect two (2) Business Days prior to the Second Conversion Date.

Facility 3: The loans made under Facility 3 shall bear interest at a variable rate of interest equal to the Lender's Prime Rate plus 100 basis points and such rate shall be adjusted with each adjustment of the Lender's Prime Rate. As of the Second Conversion Date, the interest rate for Facility 2 shall be fixed at 325 basis points above the rate determined by the Lender to be its Cost of Funds based on obligations adjusted to a constant maturity of three (3) years in effect two (2) Business Days prior to the Second Conversion Date.

Interest on the outstanding principal under the Credit Facilities will be calculated on the basis of a 360-day year consisting of twelve (12) months with the actual number of days of each month (28, 29, 30 or 31).

Loan Payments:

Facility 1: Interest only payments on the Construction Line shall be payable monthly on the first day of each calendar month on the amount of principal balance outstanding from time to time beginning on the first day of the first calendar month following the Date of Closing of the Construction Line and continuing on the first day of each and every calendar month thereafter.

If Borrower chooses Permanent Loan Option 1, there will be sixty (60) equal monthly payments of principal and interest in the amount calculated by the Lender as of the Construction Line Conversion Date to amortize the Permanent Loan on a fifteen (15) year amortization schedule. The amount of each such monthly payment shall be adjusted at the First Interest Adjustment Date and at the Second Interest Adjustment Date to continue to amortize the Permanent Loan on the same fifteen (15) year amortization schedule. If Borrower chooses Permanent Loan Option 2, there will be one hundred twenty (120) equal monthly payments of principal and interest in the amount calculated by the Lender as of the Construction Line Conversion Date to amortize the Permanent Loan on a fifteen (15) year amortization schedule. The amount of each such monthly payment shall be adjusted at the Second Interest Rate Adjustment Date to continue to amortize the Permanent Loan on the same fifteen (15) year amortization schedule. Under both options, each such payment will include a payment of interest at the then applicable Permanent Loan Interest Rate based on such amortization. Payments will be applied first to interest and then to principal. Payments will begin on the first day of the month following the Construction Line Conversion Date. If the Construction Line converts on any day other than the first day of the month then a payment of interest is due at closing calculated from the Closing Date to the end of the month.

Facility 2: Interest only payments on the advances made under Facility 2 shall be payable monthly on the first day of each calendar month on the amount of principal balance outstanding from time to time beginning on the first day of the first calendar month following the Date of Closing and continuing on the first day of each and every calendar month thereafter. Commencing on the Second Conversion Date, there will be eighty four (84) equal

monthly payments of principal and interest in the amount calculated by the Lender as of the Second Conversion Date to amortize the advances made under Facility 1 on a seven (7) year amortization schedule.

Facility 3: Interest only payments on the advances made under Facility 3 shall be payable monthly on the first day of each calendar month on the amount of principal balance outstanding from time to time beginning on the first day of the first calendar month following the Date of Closing and continuing on the first day of each and every calendar month thereafter. Commencing on the Second Conversion Date, there will be thirty six (36) equal monthly payments of principal and interest in the amount calculated by the Lender as of the Second Conversion Date to amortize the advances made under Facility 2 on a three (3) year amortization schedule.

Each such payment will include a payment of interest at the then applicable Interest Rate based on such amortization. Payments will be applied first to interest and then to principal. Payments will begin on the first day of the month following the Conversion Date. If a conversion date falls on any day other than the first day of the month then a payment of interest is due at closing calculated from the Closing Date to the end of the month.

Loan Maturities:

Facility 1: The Construction Line will have a twelve (12) month term. The Permanent Loan will have a fifteen (15) year term, subject to the Lender's right to exercise, in its sole discretion, an option (a "**Call Option**") to accelerate the maturity date of the Permanent Loan, such that the outstanding and unpaid principal balance, together with all accrued and unpaid interest, fees and expenses, and all other amounts due and owing under the Note, shall be due and payable on and as of (as applicable) the First Interest Adjustment Date, or if not so exercised and enforced, on and as of the Second Interest Adjustment Date (collectively, as applicable, the "**Call Option Dates**"), provided that written notice of the Lender's intention to exercise any such Call Option must be provided by the Lender to Borrower no later than one hundred twenty (120) days prior to the applicable Call Option Date. The maturity date under the Permanent Loan is referred to as the "**Permanent Loan Maturity Date**". Unpaid principal and accrued interest will be due and payable on the Permanent Loan Maturity Date.

Facility 2: Advances made under Facility 2 will have a seven (7) year term with a maturity date approximately eighty four (84) months from the Second Conversion Date. Unpaid principal and accrued interest will be due and payable on such maturity date.

Facility 3: Advances made under Facility 3 will have a three (3) year term with a maturity date approximately thirty six (36) months from the Second Conversion Date. Unpaid principal and accrued interest will be due and payable on such maturity date.

Late Charge:

If Borrower fails to pay, within ten (10) days of its due date, any amount due and owing pursuant to the Loan Agreement or any other agreement executed and delivered in connection with the Credit Facilities, Borrower shall immediately pay to the Lender a late charge equal to six percent (6%) of the delinquent amount.

Default Rate:

In the event of any default, at the option of the Lender, the interest rate shall be increased to three (3) percentage points per year above the otherwise applicable rate per year on the Loans. (the "Default Rate").

Loan Fees:

On or before the Date of Closing, Borrower shall pay to Lender (i) a loan origination fee of Five Thousand Dollars (\$5,000.00) for Facility 1; (ii) a loan origination fee of Five Hundred Dollars (\$500) for Facility 2; and (iii) a loan origination fee of Five Hundred Dollars (\$500) for Facility 3. Borrower hereby acknowledges that each such fees shall be for the applicable services rendered, supported by good, valuable and adequate consideration, and not refundable for any reason.

Prepayment:

Borrower shall have the option to prepay the Loans, in whole or in part in accordance with the terms of the Loan Documents, provided that, in the event that Borrower prepays the advances made under the Credit Facilities, Borrower shall pay the Lender a premium equal to the greater of (a) one percent (1%) of the amount prepaid, or (b) the present value of the difference between (i) the amount of interest that would have accrued on the prepaid principal from the date of prepayment through the earlier of the Maturity Date or the date of the next scheduled interest rate adjustment, if any ("Measurement Period") at the fixed interest rate in effect on the date of prepayment and (ii) the amount of interest that would have accrued on the prepaid principal during the Measurement Period at the Current Market Rate. "Current

Market Rate shall mean the most recent yield on United States Treasury Obligations adjusted to a constant maturity having a term most nearly corresponding to the Measurement Period, in effect two (2) business days prior to the date of prepayment, as published by the Board of Governors of the Federal Reserve System in the Federal Reserve Statistical Release H.15 (519), or by such other quoting service, index or commonly available source utilized by the Bank for such purposes. The present value calculation used herein shall use the Current Market Rate as the discount rate and shall be calculated as if each installment of principal had been made as scheduled pursuant to the terms of this Note.

**Loan Closing and
Conversion Dates:**

The Credit Facilities shall be closed by February 15, 2011, or this Commitment shall immediately become null and void without further notice; provided, however, that Borrower may elect to close Facility 2 and Facility 3 at a later date upon terms reasonably satisfactory to the Lender. As used herein, **"Date of Closing"** and **"Closing"** shall mean that day on which the Lender and the Borrower mutually agree to establish as the date for the closing of the Credit Facilities.

Upon completion of construction of the Project and the funding of all advances available under the Construction Line, as determined pursuant to the provisions of the Loan Agreement and provided no default exists in any of the terms, covenants or conditions of any of the Loan Documents (as hereinafter defined) and each of the conditions to Closing described in this Commitment have been satisfied, the Construction Line will be converted to the Permanent Loan on the Construction Line Conversion Date.

**Loan Documents and
Security for the Loan:**

The Credit Facilities shall be evidenced by promissory notes (the **"Notes"**) and governed and secured by:

- (a) A Loan Agreement (the **"Loan Agreement"**), which Loan Agreement shall be satisfactory in terms, form and substance to the Lender;
- (b) A Business Loan Agreement, which Business Loan Agreement shall be satisfactory in terms, form and substance to the Lender;

- (c) A Leasehold Mortgage (the "**Mortgage**"), which Mortgage shall be a lien upon the unencumbered fee simple title to the Property (the Property shall more fully be described in a legal description to be provided by the Borrower to the satisfaction of the Lender) and a lien and security interest in all personal property owned by the Borrower and relating to or located on the Property, subject in each case only to the prior liens and security interests granted to the Lender and the City of Utica Industrial Development Agency (the "**Permitted Prior Liens**");
- (d) An Assignment of Leases and Rents assigning to the Lender all of the Borrower's right, title and interest in and to all current and future rents, leases, contracts and agreements of the Property and all future leases and guarantees thereof, of all or any portion of the Property, and all rents, security deposits, issues and profits therefrom.
- (e) A Security Agreement pursuant to which the Borrower will grant to the Lender a security interest in all of its business assets, including all furniture, fixtures and equipment located on the Property. Such security interest shall be a perfected security interest in such assets, subject only to the Permitted Prior Liens.
- (f) Uniform Commercial Code Financing Statements filed pursuant to the Mortgage and the Security Agreement.
- (g) Assignments to the Lender of all of Borrower's right, title and interest in and to all present and future architects, construction, service and other contracts relating to the Project.
- (h) Limited personal Guaranty Agreements executed by each of the Personal Guarantors (the "**Personal Guaranty Agreements**") pursuant to which each Personal Guarantor will guarantee the completion of the Project in accordance with the Loan Agreement, and the payment of the Loans and all other obligations to Lender and the performance of each of the Loan Documents and any other documents, instruments and agreements evidencing, creating or governing obligations of Borrower to Lender with respect to the Loans (collectively the "**Lender Obligations**"). The total obligation under each Personal Guaranty Agreement

shall be limited to 21.44% of the Lender Obligations (calculated as of the time of enforcement), plus the costs of collection and enforcement, including attorneys' fees.

- (i) An unlimited Guaranty Agreement executed by the Corporate Guarantor (the "**Corporate Guaranty Agreement**") pursuant to which the Corporate Guarantor will guarantee the payment of the Lender Obligations.
- (j) An Environmental Indemnification Agreement executed by Borrower and each of the Guarantors.
- (k) A Subordination, Non-Disturbance and Attornment Agreement executed by each tenant on the Property, including the Corporate Guarantor.
- (l) Such other documents as may be requested by Lender at or prior to Closing.

All of the foregoing documents together with this Commitment, which shall survive the execution and delivery of the other Loan Documents and remain effective so long as any part of the Loan is unpaid, and the Note and the Loan Agreement shall be known herein as the "**Loan Documents**," which Loan Documents shall be in form, substance and execution acceptable to the Lender.

Loan Closing Documents: Borrower shall furnish the following documentation to the Lender at least five (5) business days prior to Closing Date (except as noted), all in form, substance and execution satisfactory to the Lender and all subject to review, verification and acceptance by Lender:

- (a) Appraisal. Market Value Appraisal of the Property (to be obtained by the Lender at the Borrower's expense). The appraisal must be addressed to Lender and state that the appraisal is being utilized for mortgage purposes for Lender. The appraisal must be completed according to XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and the Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of the Appraisal Foundation. The form and manner of such appraisal shall be determined by Lender and must be acceptable to Lender in its sole discretion, and the findings of such appraisal must be

- acceptable to Lender and its sole discretion. Such appraisal must show an appraised value satisfactory to Lender.
- (b) Lien searches completed before the Closing Dates to be satisfactory to the Lender and covering the Borrower and Guarantors.
 - (c) Plans and Specifications for construction of the Project, satisfactory to the Lender.
 - (d) An itemization of all estimated hard and soft costs for the Project by line item.
 - (e) Construction schedule provided by Borrower and construction supervisor setting forth the approximate commencement and completion dates of all major stages of Project construction; such schedule shall provide that Construction of the Project shall commence after Closing but no later than ninety (90) days after Closing.
 - (f) Evidence satisfactory to the Lender of compliance with all local governmental zoning and building ordinances, receipt of all building permits and governmental approvals necessary for Project, including, without limitation, proof of compliance with all applicable zoning requirements.
 - (g) Survey of the Property (the "Survey") setting forth all existing improvements, easements, rights of way, matters to be shown in Schedule B of the ALTA Policy, and such other matters as the Lender may request showing no current or proposed, encroachments, and certified by a registered engineer or surveyor to Lender.
 - (h) Certified copies of General Contractor's contract and the Architect's Contract and all other contracts related to the construction of the complete Project with assignments to the Lender.
 - (i) A list of all known and contemplated subcontractors with copies of each contract with the General Contractor.
 - (j) An engineering report, satisfactory to the Lender, for the building located on the Property and the Project Costs.

- (k) Evidence of availability to the Property to the storm and sanitary sewers and all utilities.
- (l) An Environmental Assessment Report indicating that the Property is free from risk in the Lender's sole judgment from all hazardous substances, toxic substances or hazardous wastes as defined by any federal, state, or local law, statute, ordinance or regulation and is free of all other contamination which, even if not so regulated, is known to pose a hazard to the health of any person on or about the Property and that the Property is not in a "Wetlands" or "Flood Plain" area, and contains no underground storage tanks. The Lender reserves the right, at Borrower's expense, to retain an independent consultant to review any such evidence submitted by Borrower or to conduct its own investigation or assessment of the Property.
- (m) A Builders Risk Policy for the Property and Project with the Lender named as first mortgage holder in an amount not less than the full Construction Loan Amount.
- (n) Evidence of suitable Owners/Contractors Liability Insurance and, if required, Workers' Compensation Coverage.
- (o) Flood insurance in an amount as Lender may reasonably require if the Property is located in a Flood Hazard Area (to be obtained by Lender at Borrower's expense).
- (p) Commitment for the insurance of ALTA Policy and copies of all items listed in Schedule B thereof.
- (q) Review and approval of Lease agreement between Borrower and the Corporate Guarantor, as well as certified copies of all other leases affecting the Property.
- (r) UCC-3 Termination Statements and other lien releases terminating all security interests and liens on the assets and properties of the Borrower.
- (s) Current financial statements, satisfactory to Lender, for Borrower and the Guarantors, together with authorizations to obtain credit reports with respect to Borrower and the Guarantors.

- (t) Satisfactory evidence of capital contribution to Borrower in the amount of not less than Three Hundred Seventy Thousand Dollars (\$370,000.00).
- (u) Certified copy of Borrower's Articles of Organization, Operating Agreement, Certificate of Good-Standing from the Secretary of State of the State of Organization and Company Resolutions authorizing the company action required with respect to the Loans and the Loan Documents.
- (v) Evidence satisfactory to the Lender in its sole discretion that the Borrower and the Corporate Guarantor have obtained or will obtain all licenses and approvals necessary for the construction and operation of an ambulatory surgery center or office-based surgical facility at the Property.
- (w) The opinion of legal counsel for Borrower and Guarantors that with respect to Borrower and the Guarantors: (a) such legal counsel has not been engaged to represent Borrower or Guarantors with respect to any threatened or pending litigation that might affect the Credit Facilities, the Borrower or Guarantors; (b) the transactions contemplated by this Commitment do not violate any provision of any law, restriction or other document affecting the Borrower or any of the Guarantors; (c) the Loan Documents have been duly executed and delivered, constitute legal, valid and binding obligations of Borrower and are enforceable against the Borrower in accordance with their terms; (d) the Personal Guaranty Agreements and Corporate Guaranty Agreements have been duly executed and delivered, constitute legal, valid and binding obligations of the Guarantors and are enforceable against the Guarantors in accordance with their terms; (e) Borrower is a validly organized and existing company under the laws of the State of New York, that it has the legal capacity to own, develop and operate the Property and to perform its obligations under the Loan Documents, and that the Loans and the Loan Documents have been duly authorized by the Borrower; (f) the Corporate Guarantor is a validly organized and existing company under the laws of the State of New York, that it has the legal capacity to own, develop and operate the Property and to perform its obligations

under the Loan Documents, and that the Loans and the Loan Documents have been duly authorized by the Corporate Guarantor; (g) the Borrower and the Corporate Guarantor have obtained or will obtain all licenses and approvals required for the construction and operation of an ambulatory surgery center or an office-based surgical facility at the Property; and (h) such other matters concerning the Loan, the Loan Documents, the Borrower, the Guarantors, as the Lender or its counsel may require.

Construction Loan

Disbursement Procedures: All funds disbursed under the Credit Facilities shall be subject to the Loan Agreement and in the case of the Construction Line, the Business Loan Agreement, which shall contain such terms, covenants, and conditions and otherwise be in form, substance and execution, as shall be satisfactory to the Lender, including without limitation, the following:

Draw Request: All requests for disbursement of funds ("Loan Disbursements") shall be submitted on a standard Lender form which shall have costs consistent with the final Project cost breakdown accepted by the Lender in aggregate total and itemization. Each draw request shall be signed by the Borrower and approved in writing by the Project Architect or Engineer.

Affidavits/Lien Waivers: The Borrower shall submit with all draw requests affidavits certifying all outstanding balances due but unpaid for work in place for the Project. With each draw request Borrower shall deliver to Lender waivers of liens from contractors in the respective sum received by each such contractor for all of Borrower's preceding draw requests.

The Borrower shall otherwise also comply with the requirements set forth in the New York Lien Law to the extent applicable.

Inspections: All inspections shall be completed by an agent for the Lender who may require further information, including, but not limited to, documents such as contracts and invoices, to complete the analysis of the Draw Request. The cost of this inspection shall be paid directly by the Borrower.

Disbursements: All disbursements shall be made approximately ten (10) days after receipt of all information required by the Lender to approve the requested disbursements.

Funds will be disbursed directly to the Borrower upon Lender approval, provided however, the Lender reserves the right to pay individual contractors directly or by check jointly payable to Borrower and any such contractor should circumstances warrant in Lender's sole opinion.

Retainage: Lender shall withhold five percent (5%) (the "Retainage") of each such requested Loan Disbursement under the Construction Line for the Project until construction of the Project is complete.

**Permanent Loan
Closing Documents:**

Borrower shall furnish the following documents to the Lender at least five (5) business days prior to the Construction Line Conversion Date (except as noted), all in form substance and execution satisfactory to the Lender and all subject to review, verification and acceptance by Lender.

- (a) A certificate from the supervising architect or General Contractor certifying that the building and improvements have been completed in accordance with the Plans and Specifications as approved by the Lender.
- (b) Evidence of the Property's compliance with all applicable laws (including zoning) and private covenants and restrictions.
- (c) All Certificates of Occupancy for the Property and any other certificates and licenses required by the State of New York or by any other applicable government agency.
- (d) Evidence of suitable policies of: (1) permanent fire and casualty insurance in an amount which shall be at all times the greater of the Loan Amount or full replacement cost of the Property, (2) general liability insurance, (3) business interruption and other insurance relating to the Property or the operation thereof as the Lender may reasonably require from time to time, with the Lender named as first mortgagee on the policies. The policies shall at all times be in form, substance and sufficiency of amount and type of coverage and be issued by insurance carriers acceptable to the Lender.

Title Insurance Policy:

The Lender shall be furnished an ALTA Loan Policy of Title Insurance, Form B, as amended (Additional Coverage Form) issued by a title company satisfactory to the Lender in the Loan Amount, insuring the Lender that the Mortgage is a first lien upon the Property, and including insurance against mechanic's and materialmen's liens and encroachments by or upon the Property and with variable rate, comprehensive and such other endorsements as may be required by the Lender, with all so-called "Standard" exceptions deleted and containing no exceptions other than those specifically approved by the Lender (the foregoing hereinafter referred to as the "ALTA Policy"). If required under the mechanics' lien law, Borrower shall execute and record a Notice of Commencement in compliance with the New York Lien Law.

**Additional Loan
Covenants and
Conditions:**

The Credit Facilities shall be made available under and subject to the terms, conditions, representations, warranties and covenants set forth in the Loan Documents, including, without limitation, the following conditions and covenants:

- (a) Existing bank indebtedness of the Borrower must be financed with Lender upon terms, and subject to documentation, satisfactory to Lender in form and substance.
- (b) Construction of the Project shall be completed prior to twelve (12) months after commencement of Project construction.
- (c) Borrower will provide Lender evidence at Closing and annually thereafter, of suitable policies of: (1) Permanent Fire and Casualty Insurance in an amount which shall be at all times the greater of the Loan Amount or full replacement cost of the Property, (2) general liability insurance, (3) other appropriate insurance relating to the Property or the operation thereof as the Lender may reasonably require from time to time, with the Lender named as first mortgagee on the policies. The policies shall at all times be in form, substance and sufficiency of amount and type of coverage and be issued by insurance carriers acceptable to the Lender.

- (d) Lender shall be entitled to erect a sign on Project premises indicating Lender is the source of financing for the Project.
- (e) Submission to Lender of annual financial statements and Federal Income Tax Returns for Borrower and the Corporate Guarantor within one hundred twenty (120) days of the applicable fiscal year-end.
- (f) Submission to Lender of annual personal financial statements on all Personal Guarantors.
- (g) Submission to Lender of annual income and expense statements with respect to the Property and annual rent rolls.
- (h) Borrower shall maintain a debt service coverage ratio (the "**Borrower DSCR**") of not less than 1.20 to 1 for each fiscal year of Borrower during the term of the Loans, beginning with the Borrower's first fiscal year end following the Closing. The Borrower DSCR shall mean, for any fiscal year of the Borrower, the ratio determined by dividing (i) gross income received by the Borrower for such fiscal year minus owner's distributions and withdrawals and operating expenses incurred by the Borrower for such fiscal year (excluding depreciation and amortization for such fiscal year and interest expense accrued on the Loans during such fiscal year), in each case as determined by generally accepted accounting principles consistently applied, by (ii) the sum of the scheduled principal plus interest payments made or to be made on the Borrower's indebtedness during such fiscal year.
- (i) Borrower shall maintain its demand and depository accounts with the Lender for the life of the Credit Facilities.
- (j) Lender shall have the right to automatically deduct any payments or amounts owed under the Notes or any of the other Loan Documents from accounts Borrower maintains at Lender.

Expenses:

The Borrower and the Guarantors shall pay all costs and expenses in connection with this Commitment and the Credit Facilities including (by way of illustration and not limitation): Lender's

credit investigation fees, Lender's attorneys' fees, Lender's document preparation and review fees, environmental audit and site inspection fees, filing and recording fees, environmental evaluation fee and any and all other costs of the Lender in connection with this Commitment and the Loan.

Assignability of Commitment:

This Commitment is made exclusively to the Borrower and is not assignable nor transferable voluntarily or involuntarily by the Borrower and any such assignment or transfer or attempted assignment or transfer shall be null and void and shall result in this Commitment being automatically and simultaneously terminated.

Notwithstanding the foregoing, in the event that Borrower obtains the requisite regulatory approvals for the construction and operation of an ambulatory surgery center at the Property, Borrower may accept one or more hospital entities as additional members, subject to terms and conditions satisfactory to the Lender in its sole discretion (provided that the total obligation under each Guaranty Agreement to be given by a hospital entity which is a direct or indirect member of the Borrower shall be limited to not more than 20% of the Lender Obligations (calculated as of the time of enforcement, plus the costs of collection and enforcement, including attorneys' fees).

Indemnification:

Borrower and Guarantors agree to indemnify and to defend and hold the Lender harmless against any claims, demands, commissions, finders fees, losses, liabilities and expenses (including reasonable attorney's fees) that may be incurred by or awarded against Lender in each case arising out of this Commitment or the transactions contemplated by this Commitment, except to the extent any such claim, demand, commission, fee, loss, liability or expense results from Lender's gross negligence or willful misconduct.

No Adverse Change:

On or after the date of this letter and/or prior to the Loan Closing Date, the Lender may terminate this Commitment in the event that: (a) Borrower shall fail to comply with any of the terms, provisions or conditions hereof, time being declared to be of the essence hereof; or (b) any representation, warranty, statement, certificate, schedule or report made herein or delivered to Lender in connection with this Commitment shall be false or misleading in any material respect as of the time made or furnished; or (c) Borrower or any of the Guarantors shall (i) apply for or consent to

the appointment of a receiver, trustee or liquidator for any of its property, (ii) admit in writing an inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a Bankrupt or insolvent, or (v) file a voluntary petition in Bankruptcy or an answer seeking reorganization or an arrangement with creditors or take advantage of any Bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute or an answer admitting the material allegations of a petition filed against it in any proceedings under such law; or (d) Borrower shall not pay any of the fees or expenses provided for herein; or (e) the financial condition or operations of Borrower or any of the Guarantors prior to the closing of the Loans shall have changed unfavorably in any material degree from its condition as heretofore represented to Lender; or (f) any potentially material adverse action, suit or proceeding shall be instituted against or threatened against Borrower or any of the Guarantors.

Commitment Expiration: This Commitment is open for acceptance by the Borrower until 10:00 A.M. Eastern Time on January 5, 2011. If it is not accepted and returned to the Lender by said date, the Commitment shall immediately become null and void without further notice.

Any unpaid Loans costs and expenses shall be paid by Borrower and the Guarantors immediately upon the expiration or termination of this Commitment for any reason.

By executing this letter, you acknowledge that this letter can not set forth every provision imposing obligations on you pursuant to any agreement, instrument or other writing and that failure by Borrower or Lender to reach an agreement on any such provision shall not be deemed to be a breach of any obligation Lender may have pursuant to this Commitment Letter.

The Lender's obligation under this Commitment shall be subject to the satisfactory compliance by the Borrower with all of the conditions contained herein. The issuance of this Commitment shall not prejudice the Lender's rights of review and approval, including without limitation, with respect to documents and materials heretofore delivered to the Lender by or on behalf of the Borrower. This Commitment shall not be binding upon the Lender unless it is accepted in writing by the Borrower and the Guarantors as provided herein, and delivered and returned to Manufacturers and Traders Trust Company, Attention: Alicia M. Brockway, 233 Genesee Street, Utica, New York 13501 on or before 10:00 A.M. Eastern Time on January 5, 2011. **TIME IS OF THE ESSENCE IN THIS COMMITMENT.**

Very truly yours,

**MANUFACTURERS AND TRADERS
TRUST COMPANY**

By: Alicia M. Brockway
Alicia M. Brockway
Assistant Vice President

ACCEPTANCE OF COMMITMENT

The undersigned hereby acknowledge receipt of the foregoing Commitment this 17th day of December, 2010 and do hereby accept and agree to all of the terms, conditions and time limitations set forth in the Commitment by the execution of same. The undersigned acknowledge and agree that the Lender's obligation under this Commitment is subject to its subsequent acceptance by each of the Personal Guarantors.

BORROWER:

MOHAWK VALLEY, EC, LLC
By: **MVEC HOLDINGS, LLC**

By: [Signature]
Title: partner

CORPORATE GUARANTOR:

**DIGESTIVE DISEASE MEDICINE OF CENTRAL
NEW YORK, LLP**

By: [Signature]
Title: partner

116 BUSINESS PARK ASSOCIATES, LLC

By: [Signature]
Title: partner

ATTACHMENT 2

OLYMPUS

December 27, 2010

Mohawk Valley EC, LLC,
As agent for the City of Utica Industrial Development Agency
Attention: Peggy Alteri
110 Business Park Drive
Utica, NY 13502

Olympus Financial Services® is pleased to offer the following proposal for your review:

Equipment: Please refer to Olympus Quote No. 136868-Q0-4 dated December 21, 2010.

Equipment User ("User"): Mohawk Valley EC, LLC

Equipment Owner: Olympus America Inc.

Sales Representative: Jim Potts

Facility Structure: Master Lease Agreement ("Agreement")
Fair Market Value without Service

Net Equipment Cost: \$771,698.50

Term: 60 Months

Total Monthly Payment: \$14,446.50 plus all applicable taxes.

Net Agreement: User is responsible for all expenses relating to the Agreement including insurance and all applicable taxes.*

End of Term Options: Fair Market Value.

Documentation: Upon execution of the appropriate Agreement by User and acceptance of Agreement by Owner, the Terms and Conditions of the Agreement and all related documents will supersede this proposal.
If User is tax-exempt, status must be substantiated by a copy of User's tax-exempt certificate

Proposal Expiration Date: This proposal is good for 90 days.

This proposal is subject to credit review and approval by Olympus as well as review and approval of all related documentation. This proposal is not an offer or a commitment and may be withdrawn at any time by Olympus in its sole and absolute discretion.

Best regards,
OLYMPUS AMERICA INC., FINANCIAL SERVICES

John Costa

484-896-5327

OLYMPUS AMERICA INC.

3500 CORPORATE PARKWAY, CENTER VALLEY, PA 18034
TELEPHONE: 484-896-5000



Your Vision, Our Future

OLYMPUS AMERICA INC.
CUSTOMER SERVICE
3500 Corporate Parkway
P.O. BOX 610
Center Valley, PA 18034-0610

TEL: (800) 848-9024
FAX: (800) 228-4963

QUOTATION

NO. 136868-Q0-4

Please refer to this number on all
correspondence, or other communications

December 21, 2010

Digestive Disease Med.Of Central Ny
Attention: Ted Kondzielawa
Utica, NY 13502

Dear Mr. Kondzielawa:

Thank you for providing Olympus with the opportunity to quote our Medical products as listed on this quote # 136868-Q0-4.

The prices quoted below are based on Olympus - Non Contract pricing.

Should you have any other questions regarding this quotation or any Olympus services, please contact your sales representative:

Name: Jim Potts
E-Mail: Jim.Potts@olympus.com
Phone: (800) 645-8100 x106108
Fax: (800) 228-4963

Thank you for your interest in Olympus and our quality products and services.

Sincerely,

...
Customer Service Representative

OLYMPUS

Your Vision, Our Future

OLYMPUS AMERICA INC.
CUSTOMER SERVICE
3500 Corporate Parkway
P.O. BOX 510
Center Valley, PA 18034-0610

TEL: (800) 848-9024
FAX: (800) 228-4963

QUOTATION

NO. 136868-Q0-4

Please refer to this number on all correspondence, or other communications

CUSTOMER INFORMATION

Customer: Digestive Disease Med.Of Central Ny
Attention: Ted Kondzielawa
Address: .
Utica, NY 13502
Phone: (000) 000-0000
Fax: (000) 000-0000
E-Mail: [REDACTED]

OLYMPUS SALES REP.

Name: Jim Potts
MP Sales Representative
Home Page: <http://www.olympusamerica.com>
Phone: (800) 645-8100 x106108
Fax: (800) 228-4963
E-Mail: Jim.Potts@olympus.com

TERMS AND CONDITIONS

Effective: 12/21/2010

Expres: 1/21/2011

Terms: Net 30 days, subject to Olympus credit approval.

F.O.B.: Shipping Point
Freight Charges may apply

Tax: When Applicable.

Delivery: 30/45 days After Receipt of Order.

Warranty: Generally, Capital equipment manufactured by Olympus is warranted against manufacturers defect for a period of one year. See Limited Warranty for details.

FINANCIAL OPTIONS

1. Net 30 Days/Interest 1 1/12% monthly, subject to Olympus credit approval.
2. American Express, Visa and MasterCard accepted.
3. Olympus offers a wide range of services from financing/leasing options, including a usage-based program that matches payments to procedures performed to a comprehensive service agreement.



Your Vision, Our Future

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CUSTOMER SERVICE
3500 Corporate Parkway
P.O. BOX 610
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FAX: (800) 228-4963

QUOTATION

NO. 136868-Q0-4

Please refer to this number on all correspondence, or other communications

QUOTATION DETAIL

	Item / Description	List Price	Your Price	Qty	Extended Price
1	CV-180: New - EVIS EXERA II video system center with High-Definition and Standard Definition signal output, Narrow Band Image processing, electronic magnification of 1.2x and 1.5x, memory card digital image recording, HD/SD serial digital Interface, structural enhancement, picture-in-picture, digital-to-digital video recording, annotation and Olympus surgical products compatibility. Requires CLV-180 light source. Standard accessories: - MAJ-1428 CV-180 keyboard for EVIS EXERA II - MAJ-1430 Videoscope cable - MAJ-1462 HD/SD monitor cable - MAJ-1433 Foot holder for CV-180 - MAJ-1432 Spare fuse for CV-180 - MAJ-1466 Scope cable holder for CV-180 - MAJ-155 White balance cap set - MAJ-901 Water container - Power cord	23,500.00	15,275.00	4 ea	61,100.00
2	CLV-180: New - EVIS EXERA II high intensity 300W xenon light source for Olympus color CCD videoscope system with specially coated filters for Narrow Band Imaging and emergency 100W halogen lamp. Standard accessories: - MAJ-1411 Light control cable (1 pc.) - MAJ-1412 Spare fuse (1 pc.) - MAJ-1433 Foot holder (1 pc.) Note: CLV-180 light source is not compatible with CV-160, 140, 100	13,400.00	8,710.00	4 ea	34,840.00
3	CF-H180AL: New - EVIS EXERA II High-Definition, Narrow Band Imaging compatible, close focus, wide-angle view, Innoflex adjustable stiffness video colonoscope with full screen image, auxiliary water jet, 12.8 mm diameter, 3.7 mm channel, 170° field of view, 168 cm working length and angulation of 180°/180° (up/down) 160°/160° (right/left). Includes biopsy forceps FB-220U (2 pcs.), MAJ-855 auxiliary water tube (1 pc.), MAJ-215 auxiliary water inlet cap (1 pc.). Complete with standard accessories.	41,200.00	26,780.00	12 ea	321,360.00
4	GIF-H180: New - EVIS EXERA II High-Definition, Narrow Band Imaging compatible, close focus, video gastroscope with full screen HDTV image, and 9.8 mm diameter, 2.8 mm channel, 140° field of view, 103 cm working length and angulation of 210°/90° (up/down), 100°/100° (right/left). Includes biopsy forceps FB-220K (2 pcs.), mouthpiece MB-142 (2 pcs.). Complete with standard accessories.	35,700.00	23,205.00	8 ea	185,640.00
5	PCF-H180AL: New - EVIS EXERA II High-Definition, Narrow Band Imaging compatible, close focus, Innoflex adjustable stiffness, ultra slim video colonoscope with forward water jet and 11.8 mm outer diameter, 3.2 mm channel, 140° field of view, 168 cm working length, and angulation of 180°/180° (up/down) and 160°/160° (right/left). Includes biopsy forceps FB-220U (2pc.), MAJ-855 auxiliary water tube (1pc.), MAJ-215 auxiliary water inlet cap (1pc.). Complete with standard accessories.	42,000.00	27,300.00	4 ea	109,200.00
6	OEV-191H: New - Olympus 19 in. high-definition medical-grade LCD monitor with RGBS, Y/C, and composite video input/output	5,450.00	3,542.50	4 ea	14,170.00
7	OL-0015-02: New - GCX STD ROLLSTAND 47-61.5" 25# MAX W/PWR SPLY HOLSTER & CORD	895.00	581.75	4 ea	2,327.00
8	OEP-4: New - Olympus HD color printer	8,350.00	5,427.50	4 ea	21,710.00
9	WM-DP1: New - EVIS EXERA II double-wide procedure cart	5,995.00	3,896.75	4 ea	15,587.00
10	MAJ-179: New - Sliding keyboard tray for WM-WP1, WM-NP1, WM-DP1	685.00	445.25	4 ea	1,781.00



Your Vision, Our Future

OLYMPUS AMERICA INC.
CUSTOMER SERVICE
3500 Corporate Parkway
P.O. BOX 610
Center Valley, PA 18034-0610
TEL: (800) 848-9024
FAX: (800) 228-4963

QUOTATION	
NO.	136868-Q0-4
Please refer to this number on all correspondence, or other communications	

QUOTATION DETAIL (continued)					
	Item / Description	List Price	Your Price	Qty	Extended Price
11	MAJ-183: New - Scope pole kit for WM-NP1, WM-WP1, WM-DP1	485.00	315.25	4 ea	1,261.00
12	FREIGHT: New - Freight, shipping, and/or handling charges. Expedited freight will incur additional charges.	2,722.50	2,722.50	1 ea	2,722.50

- I. Price quotes and the total package prices are for listed items only.
- II. Changes, additions or deletions from this package quotation may cause pricing adjustments.
- III. Service manuals and additional operator manuals are not included and may be ordered by contacting the Customer Care Center at (800) 848-9024.
- IV. If freight charge is included, freight charge may not necessarily reflect the exact charges paid by Olympus to the carrier due to volume incentive discount agreements entered into between Olympus and carrier.

List Total Price:	\$1,185,762.50
Your Total Price:	\$771,698.50

MASTER LEASE AGREEMENT
Master Agreement Number: Example

This Master Lease Agreement (which, together with all schedules, exhibits, riders, attachments, supplements and amendments hereto are collectively referred to as "Master Agreement"), dated as of **June 10, 2009** is entered into by and between Olympus America Inc., a New York corporation (together with its successors and assigns, if any, "Lessor"), with offices at 3500 Corporate Parkway, Center Valley, PA 18034, and _____, a _____ with offices at _____ ("Lessee").

KEY DEFINITIONS. For purposes of this Master Agreement, the following terms shall have the following meanings ascribed thereto:

- (a) **"Acceptance Date"** means, as to any Lease, the date Lessee shall have actually accepted the Equipment subject to such Lease or shall be deemed to have accepted the Equipment subject to such Lease in accordance with Section 3.
- (b) **"Equipment"** has the meaning specified in Section 1.
- (c) **"Equipment Location"** means, as to any Equipment, the address at which such Equipment is delivered and installed, as specified in the applicable Schedule. Lessee shall not move the Equipment from the Equipment Location without the prior written consent of Lessor.
- (d) **"Lease"** has the meaning specified in Section 1.
- (e) **"Guarantor"** means any guarantor of all or any portion of Lessee's obligations under this Master Agreement and/or any Lease.
- (f) **"Other Financed Items"** has the meaning specified in Section 4.
- (g) **"Periodic Lease Payment"** has the meaning specified in Section 4.
- (h) **"Pricing Expiration Date"** means, as to any Lease, the date set forth in the Schedule for such lease or, if no date is specified, the date that is thirty (30) days following the date of delivery of the Equipment subject to such Lease, to the Equipment Location.
- (i) **"Purchase Documents"** means, as to any Equipment, any purchase agreement, purchase order, contract, bill of sale, license agreement, invoice and/or other documents that Lessee has, at any time, approved, agreed to be bound by or entered into with any Supplier of such Equipment relating to the purchase, ownership, use or warranty of such Equipment.
- (j) **"Related Agreements"** has the meaning specified in Section 4.
- (k) **"Schedule"** means, a Schedule executed by Lessor and Lessee pursuant to Section 2(A).
- (l) **"Seller"** means, as to any Equipment, the seller of such Equipment, as specified in the applicable Schedule.
- (m) **"Supplier"** means, as to any Equipment, the Seller and the manufacturer or licensor of such Equipment collectively, or where the context requires, any of them.

- (n) **"Taxes"** means any and all taxes, duties, charges, fees, levies or other assessments imposed by any taxing authority, including, without limitation, value -added, excise, withholding, personal property, real estate, sale, use, ad valorem, license, lease, service, stamp, transfer, customs, duties, alternative, add-on, minimum, estimated and franchise taxes (including any interest, penalties or additions attributable to or imposed on or with respect to any such assessment).
- (o) **"Term"** means, as to any Lease, the term thereof as specified in the related Schedule.

TERMS AND CONDITIONS

1. **PURPOSE OF MASTER AGREEMENT.** The purpose of this Master Agreement is to set forth the general terms and conditions upon which Lessor shall lease to Lessee and Lessee shall lease from Lessor items of equipment (collectively, "Equipment"), whether payment for such Equipment is remitted on a fixed periodic basis (e.g., weekly, monthly, quarterly) or on a Cost Per Procedure[®] (CPP[®]) basis. The Equipment leased pursuant to this Master Agreement, the payment for such Equipment and other matters related thereto shall be set forth on a separate schedule or schedules to this Master Agreement (each a "Schedule"). Lessor shall assign a number to each Schedule to this Master Agreement, and each Schedule shall reference the Master Agreement number assigned to this Master Agreement. The lease of Equipment pursuant to this Master Agreement under a Schedule is referred to herein as a "Lease".

2. **COMMENCEMENT PROCEDURE.** Subject to the terms and conditions in this Master Agreement and the applicable Schedule, Lessee may, at its option, enter into individual Leases with Lessor as follows:

- A. **Execution of Schedule.** If Lessor and Lessee mutually agree to enter into a Lease for Equipment, then they shall execute a Schedule. Each Schedule, when executed by both Lessee and Lessor, together with the terms and conditions of this Master Agreement, shall constitute a separate and distinct Lease for the items of Equipment identified in the Schedule but shall be subject to the aggregate or collective default provisions of Section 11 (i.e., a default under any Lease is a default under this Master Agreement and all other Leases). In the event of any conflict between the terms of this Master Agreement and such Schedule, the provisions of the Schedule shall govern.
- B. **Acceptance; Term of Leases.** Lessee shall accept the Equipment identified in the Schedule in accordance with Section 3. The Term of each Lease for such Equipment identified in the Schedule shall begin on the Acceptance Date of the Equipment and shall continue for the period described in the applicable Schedule.

3. **SELECTION, INSTALLATION AND ACCEPTANCE OF EQUIPMENT.** Lessee acknowledges, represents and warrants that it has selected the Equipment and has relied on its own skill and experience in selecting Equipment suitable to its particular needs and purposes. Upon receipt of the Equipment, Lessee shall inspect and install the Equipment to confirm that Equipment conforms to Supplier's published specifications and shall verify, by means to be specified by Lessor, such information as Lessor may require, including without limitation, execution of an Acceptance Certificate, if required by Lessor. Lessee shall be deemed to have accepted the Equipment, subject to the provisions of the Supplier's warranty for the Equipment as applicable, if Lessee does not notify Lessor, in writing, within ten (10) days from the date of delivery that Equipment does not meet the Supplier's published specifications. Lessor shall provide confirmation to Lessee of the Acceptance Date if requested by Lessee. If Lessee notifies Lessor that the Equipment fails to meet the Supplier's published specifications and the Lessee is unable to require Supplier to make the Equipment conform to published specifications by the Pricing Expiration Date, then Lessor may, in its sole discretion, elect to declare Lessee in default of this Master Agreement and/or the applicable Lease and exercise any of the rights or remedies available to Lessor (including but not limited to those set forth in Section 12). Delivery and installation costs are Lessee's responsibility. If Lessee separately executed a purchase contract for the Equipment, by executing a Schedule, Lessee assigns its rights, but none of its obligations, under such purchase contract to Lessor. Lessor shall not be liable for specific performance under this Master Agreement or any Schedule hereto.

4. **PAYMENTS.** As payment ("Periodic Lease Payment") for the Equipment under any Lease, Lessee agrees to pay the amounts specified in the applicable Schedule on the due dates specified in the applicable Schedule. All Periodic Lease Payments and other amounts due hereunder shall be made by Lessee unconditionally without defense, counterclaim, or offset of any kind for any reason whatsoever. The expiration or earlier termination of this Master Agreement or the applicable Schedule shall not release Lessee from its obligation to pay any amount owed to Lessee hereunder (including without limitation the Periodic Lease Payments) or operate to discharge any liability or obligation to Lessor incurred by Lessee prior to, contemporaneous with, or after the expiration or termination date of this Master Agreement or the applicable Schedule. Lessor shall have the right to charge an administration fee of up to five percent (5%) of the delinquent amount due to cover the additional administrative burden, overhead and internal costs of collecting such delinquent amount. Unless Lessor has agreed in writing to the Lessee to the contrary, Lessor may adjust the Periodic Lease Payment on any Schedule in an amount proportionate to any increase

or decrease (from the date Lessor calculated the Periodic Lease Payment to the date Lessor receives the duly executed Lease from Lessee) in the interpolated like-term Interest Rate Swap as quoted by the Federal Reserve at: <http://www.federalreserve.gov/releases/H15/update/h15upd.htm>.

In addition to the Periodic Lease Payment attributable to the rental of Equipment, Lessee may request Lessor to finance other items, which Lessor may consent to finance in its sole and absolute discretion (the "Other Financed Items"). Other Financed Items may include, and are not limited to, maintenance and repair contracts related to the Equipment leased under any Schedule hereto, computer hardware, software and related maintenance costs, other equipment and machinery, shipping charges, working capital, consulting and other services. Other Financed Items shall be clearly identified on Schedules, riders, amendments and attachments to this Master Agreement, as applicable. Lessee's rights and obligations with respect to the Other Financed Items shall be identified in separate agreements ("Related Agreements") governing the terms of such Other Financed Items. Lessor shall have no responsibility or obligation with respect to the Related Agreements, unless otherwise expressly agreed in a written instrument duly executed by Lessor and Lessee (to that end, if Lessor is the party to the Related Agreement, then Lessor shall be liable under such Related Agreement in accordance with its terms, but if any affiliate of Lessor is a party to the Related Agreement, then Lessor shall have no liability or obligation under such Related Agreement). If Lessor consents to finance Other Financed Items on any Schedule, rider, amendment or attachment, the Periodic Lease Payment shall be adjusted to include these amounts on the basis Lessor is requested to finance such items, subject to Lessor's cost to finance the Other Financed Items. Lessee hereby assumes all risks and obligations associated with the Related Agreements and shall indemnify and hold harmless Lessor for any expenses or losses incurred as a result of Lessee's failure to completely comply with all terms and conditions of the underlying Related Agreements. If Lessor (not any affiliate of Lessor) is a party to such Related Agreement, then Lessor shall be liable under such Related Agreement in accordance with its terms. Notwithstanding the immediately preceding sentence or anything else in this Master Agreement or the Related Agreement to the contrary, under no circumstances shall the portion of the Periodic Lease Payment attributable to Other Financed Items be cancellable or subject to any offset, defense or counterclaim under this Master Agreement or any Lease.

5. ASSIGNMENT OF EQUIPMENT WARRANTIES. To the extent permitted, Lessor hereby assigns to Lessee, for the Term of any Lease, all Equipment warranties provided by any Supplier in the applicable purchase contract.

6. TITLE. The Equipment is and shall remain the sole personal property of Lessor. No right, title or interest in the Equipment shall pass to Lessee other than those rights expressly set forth in this Master Agreement or a Schedule. Lessee shall, at its expense, protect and defend Lessor's title to the Equipment and shall at all times keep the Equipment free from any legal process and/or encumbrances whatsoever, including but not limited to liens, attachments, levies and executions, and Lessee shall give Lessor immediate written notice thereof and shall indemnify Lessor for any loss caused by the failure of Lessee to take action as provided herein. Lessor shall have the right to enter upon the premises where the Equipment is located for the purpose of confirming its existence, condition, and proper maintenance.

7. REPRESENTATIONS, WARRANTIES & COVENANTS OF LESSEE. Lessee represents, warrants, and/or covenants to Lessor that: (a) the Equipment will be used only (i) by Lessee, (ii) in the manner for which it was intended, (iii) in accordance with all applicable manuals and instructions, and (iv) in compliance with all applicable laws and regulations, (b) it has the authority to enter into this Master Agreement, (c) the person executing this Master Agreement on behalf of Lessee has been duly authorized and has all required corporate approvals, (d) by entering into this Master Agreement, Lessee is not in violation of any laws or agreements applicable to Lessee, (e) Lessee's obligations under this Master Agreement, including all Schedules hereto, are absolute and shall continue in full force and effect regardless of the inability of Lessee to use the Equipment for any reason, (f) Lessee shall, at Lessee's own cost and expense, maintain the Equipment in good repair, operating condition, and working order (ordinary wear and tear excepted), including but not limited to the performance of reprocessing, cleaning, and maintenance procedures described in the manufacturer's instruction manuals, and (g) Lessee shall not modify, alter, or add to the Equipment (other than the use of normal operating accessories or controls) without the prior written consent of Lessor.

8. TAXES. Lessee acknowledges and agrees that all Leases under this Master Agreement are intended to be net leases and accordingly, all applicable Taxes related to the Equipment and/or any Lease shall be paid by Lessee regardless of whether or not Lessee is deemed the owner of the Equipment under any national, state or local laws and

regulations. Lessor shall report and pay all license and registrations fees and Taxes now or hereafter imposed or assessed by any governmental body, agency or taxing authority upon the purchase, ownership, delivery, installation, leasing, rental, use or sale of the Equipment, the Periodic Lease Payments or other charges payable hereunder, or otherwise upon or in connection with any Lease, whether assessed on Lessor or Lessee. Lessee shall remit payment to Lessor for any and all license and registration fees and all Taxes applicable on any Lease, as invoiced by Lessor to Lessee, subject to the tax-exempt provisions listed in this Section 8. Notwithstanding the foregoing, by initialing the "tax-exempt" line located in the signature block of this Master Agreement, Lessee represents and warrants that it is a tax-exempt organization and as such is not subject to applicable Taxes. Tax-exempt status must be substantiated by a copy of Lessee's tax-exempt certificate. If (a) Lessee is not tax-exempt, (b) Lessee loses its tax-exempt status or is acquired by an entity which is not tax-exempt, or (c) a taxing authority imposing Taxes does not permit Lessor to obtain the benefit of Lessee's tax exemption; then (i) the payments hereunder are to be net to Lessor, and (ii) Lessee shall pay directly to Lessor all license and registration fees and Taxes which may be assessed upon any Lease or the ownership, rental, purchase, possession or use of the Equipment during the applicable Term.

9. **RISK OF LOSS.** In the event any condemnation, taking, loss, destruction, theft or damage beyond repair of the Equipment (collectively, a "Casualty Loss") shall occur, the insurance proceeds (referenced in Section 10) shall be paid to Lessor so that the Equipment can be replaced and, provided that Lessee is not otherwise in default under this Master Agreement, the Lease shall continue in full force without any abatement of the Periodic Lease Payment with such replacement equipment thereafter being deemed to be Equipment leased thereunder. In the event of any repairable damage to any Equipment, the Lease shall continue with respect to such Equipment without any abatement of the Periodic Lease Payment and Lessee shall at its expense promptly cause such Equipment to be repaired to the condition it is required to be maintained in pursuant to Section 7(f). Lessee shall notify Lessor, in writing, of any Casualty Loss or repairable damage to any Equipment as soon as reasonably practicable after the date of any such occurrence.

10. **INSURANCE.** Lessee shall, at its cost, maintain in force, at all times from shipment of the Equipment until its return to Lessor, property damage and risk insurance and liability with such coverage, from such insurance carriers and in such amounts as shall be satisfactory to Lessor. The Equipment must be insured against all risks that are customarily insured against on the type of equipment leased hereunder. Lessee will name Lessor as loss payee and as additional insured on Lessee's property insurance policy. Lessee shall use commercially reasonable efforts to ensure that each insurer agrees that it will provide Lessor with 30 days' prior written notice of any alteration or cancellation of such policy. Lessee shall, upon request, deliver to Lessor evidence satisfactory to Lessor of such insurance coverage.

11. **DEFAULT.** Any of the following events or conditions shall constitute an event of default by Lessee under this Master Agreement and all Leases: (a) Lessor has not received any Periodic Lease Payment or other payment due under this Master Agreement or any Schedule, in full, within ten days after its due date; or (b) Lessee or any guarantor becomes insolvent, is liquidated or dissolved, stops doing business or assigns its rights or property for the benefit of creditors, and such actions or proceedings are not dismissed within sixty (60) days after commencement of such actions or proceedings; or (c) a petition is filed by or against Lessee or any guarantor under any section or chapter of the United States Code or any successor or similar law, and such actions or proceedings are not dismissed within sixty (60) days after commencement of such actions or proceedings; or (d) *(for individuals)* Lessee or any guarantor dies or a guardian is appointed for Lessee or guarantor; or (e) Lessee (or any affiliate) is in default of or fails to fulfill the terms of any other agreement between Lessee and Lessor or any affiliate of either; or (f) without Lessor's consent, Lessee attempts to remove from the Equipment Location (as defined in any Schedule hereto), sell, transfer, encumber, part with possession of, or sublet any Equipment; or (g) Lessee consolidates with or merges with or into any entity, or sells or otherwise transfers a majority of its assets or stock to any entity, or incurs a substantial amount of indebtedness other than in the ordinary course of its business, unless Lessee provides reasonable advance written notice to Lessor and Lessor consents, in writing, to not find Lessee in default and continue with the terms of this Master Agreement and all Schedules, which consent shall not be unreasonably withheld or delayed if Lessor determines that the criteria upon which the Lessor had originally approved Lessee for leasing would not be adversely changed as a result of the proposed merger or sale of substantially all of its assets; or (h) Lessee or any guarantor violates any other term of this Master Agreement or any Schedule or any guarantee and fails to correct such violation within ten days after written notice from Lessor.

12. **REMEDIES.** Upon the occurrence of an event of default by Lessee (as described in Section 11), Lessor may, at Lessor's sole discretion, exercise any and/or all of the following remedies: (a) terminate this Master Agreement and/or any Lease; or (b) as liquidated damages for loss of a bargain and not as a penalty, declare all amounts due and to become due under any or all Leases to be immediately due and payable, plus the then-current fair-market value of the Equipment, plus any other amounts due under this Master Agreement, including without limitation any expenses or costs of Lessor in connection with the repossession, holding, repair and subsequent sale, lease or other disposition of the Equipment; however, in no event shall Lessor be entitled to recover any amount in excess of the maximum permitted by applicable law; (c) require Lessee to return the Equipment in good condition, repair and working order at Lessee's cost and expense to a location acceptable to Lessor; (d) to the extent allowed by law, collect interest on any delinquent payment or payments made by Lessor on Lessee's behalf, which shall continue to accrue at the lower of prime plus 2% or the highest lawful rate from the due date until paid by Lessee and/or (e) pursue any other remedy at law or in equity. Lessee's obligations hereunder shall not abate by reason of Lessor's taking of possession of the Equipment or for any other reason. Lessee agrees to pay to Lessor all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in exercising any or all of its rights or remedies or in collecting and setting off money due or to become due under this Master Agreement or any Schedule hereto. All rights and remedies hereunder are cumulative and may be enforced separately or concurrently and from time to time. The exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. If there is more than one Lessee hereunder, each Lessee shall be jointly and severally liable under this Lease.

13. **EQUIPMENT RETURN REQUIREMENTS.** Except if Lessee elects to purchase the Equipment pursuant to any Schedule hereto, on or before the last day of the Term of each Lease (and any other time Lessee is required to return Equipment to Lessor under the terms of this Master Agreement or any Schedule), Lessee, at its own expense, shall immediately return the Equipment, decontaminated, complete, and in good working order and condition (normal wear and tear excepted) in accordance with the manufacturer's guidelines, to such place within the continental United States as is designated by Lessor, properly crated, freight prepaid and insured. Certain Equipment may, at Lessor's sole discretion, require de-installation by Lessor at Lessee's cost and expense. Lessee shall be responsible for, and shall reimburse Lessor promptly on demand for, any cost incurred by Lessor to qualify the Equipment for the Supplier's maintenance service or, if not available, to return the Equipment to good working condition.

If Lessee fails to return the Equipment within thirty (30) days following the last day of the Term, or otherwise arrange to purchase the Equipment in accordance with Section 6 herein and any applicable Schedule and amendments thereto, without any additional notice or documentation, the Term shall be automatically extended for successive months with respect to all items of Equipment then subject to such Lease until such time as the Equipment is returned to Lessor in accordance with this Section 13. At any time during such month-to-month renewal, Lessor shall have the right to terminate this Master Agreement and/or any Schedule by providing written notice to Lessee no less than thirty (30) days prior to the date of termination of such Lease and Lessee shall return all of the Equipment subject to such terminated Lease or Leases to Lessor during such thirty (30) day period. For each month that the Term of such Lease is so extended, Lessee shall pay to Lessor Periodic Lease Payments in amount equal to the Periodic Lease Payment in effect immediately prior to such extension, and all other provisions of this Master Agreement and the applicable Schedule shall continue to apply, including Lessee's obligation to report procedures performed with respect to any Lease that is subject to a Cost Per Procedure[®] (CPP[®]) Schedule. For any Cost Per Procedure Schedule, Lessee agrees that Lessee will report an amount that is no less than the Non-reporting Procedure Amount (as defined in the Cost Per Procedure[®] (CPP[®]) Schedule) to ensure that Lessor is paid the fair rental value of the Equipment during each month of the renewal period. Additionally, in the event Lessee fails to return the Equipment, upon expiration or earlier termination of this Master Agreement or any Schedule hereto, Lessor or its designee may enter upon the premises where the Equipment is located, with or without demand or legal process, and peacefully repossess the Equipment, free from all claims by Lessee and without liability for trespass, conversion, refund, or damages. Lessor may sell, assign, re-lease or otherwise dispose of the Equipment to such persons and upon such terms as Lessor may determine, at one or more public or private sales, with or without notice to Lessee and with or without having the Equipment present at the sale. If notice of sale or re-lease is required by law, written notice not less than ten days prior thereto shall be sufficient. Lessor shall apply the net proceeds of any sale, after deducting its costs and expenses as well as the fair market value of the Equipment on the date of such

sale, to Lessee's obligations under this Master Agreement or any Schedule hereto (including but not limited to the asset unpaid Periodic Lease Payments for the balance of the Term of any Schedule) and Lessee shall remain liable for any deficiency.

14. ASSIGNMENT. WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR, LESSEE SHALL NOT (A) SUBLET, LEND, ASSIGN, PLEDGE OR ABANDON THE EQUIPMENT, OR (B) SELL, ASSIGN, OR TRANSFER ANY RIGHTS, INTERESTS, OR OBLIGATIONS UNDER THIS MASTER AGREEMENT OR ANY SCHEDULE HERETO. All rights of Lessor in the Equipment and under this Master Agreement or any Schedule hereto may be assigned, pledged or otherwise disposed of without notice to Lessee, in whole or in part, to one or more assignees, subject to the rights of Lessee. Lessee agrees that any assignee of Lessor will be entitled to receipt of all payments and Lessee's payment obligation to such assignee shall not be subject to any abatement, offset, defense, or counterclaim. Lessee acknowledges notice of Lessor's intent to assign without the prior written consent of Lessee. Notwithstanding any such assignment, Lessor shall remain fully liable for its performance under this Master Agreement and any Schedule hereto and Lessee shall not look to any assignee for the performance of any such obligations.

15. FURTHER ASSURANCE. Lessee shall execute such further documents as reasonably requested by Lessor to more fully protect the rights of Lessor in the Equipment. Notwithstanding that Lessor is the owner of and retains title to the Equipment, to provide for public notice Lessor may file Uniform Commercial Code financing statements disclosing Lessor's interest in the Equipment and Lessee shall execute any financing statements requested by Lessor. In addition, Lessee agrees to obtain and provide to Lessor, as Lessor or its assigns may reasonably request based upon the nature of the Equipment and for purposes of the continued or extension of credit to Lessee under this Master Agreement, estoppel certificates, Lessee's certified annual financial statements, landlord waivers, mortgage waivers, and/or any other documents deemed necessary and relevant by Lessor. The statements and financial reports submitted by Lessee to Lessor are material inducements to the granting of this Master Agreement and all Schedules hereto and that any material misrepresentations therein shall constitute default hereunder. In the event Lessor is deemed not to have title to the Equipment, Lessee hereby conveys a security interest in the Equipment (and all proceeds thereof) in favor of Lessor to secure all obligations of Lessee to Lessor.

16. CHOICE OF LAW & FORUM. This Master Agreement shall be deemed to have been made and entered into in the Commonwealth of Pennsylvania and shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws rules. The parties agree that all controversies and claims arising out of this transaction or the breach or threatened breach of this Master Agreement shall be adjudicated exclusively by a court of competent jurisdiction within Lehigh County, the Commonwealth of Pennsylvania, or the United States District Court for the Eastern District of Pennsylvania, applying Pennsylvania law without regard to the conflict of laws rules thereof, except that any judgment, order, or decree obtained in any such action may be enforced in other jurisdictions by suit or in any other permitted manner. Lessee consents to the service of process in any action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Lessee at its address set forth herein. Any action by Lessee against Lessor for any default under this Master Agreement, including breach of warranty or indemnity, shall be commenced within one year after any such cause of action accrues. LESSEE AND LESSOR EACH WAIVE ALL RIGHTS TO A TRIAL BY JURY.

17. LIMITATION ON LIABILITY; INDEMNITY. LESSEE ACKNOWLEDGES AND AGREES THAT LESSOR SHALL NOT BE RESPONSIBLE FOR ANY INJURIES, DAMAGES, PENALTIES, CLAIMS OR LOSSES, INCLUDING LEGAL EXPENSES, INCURRED BY LESSEE OR ANY OTHER PERSON CAUSED BY THE TRANSPORTATION, INSTALLATION, MANUFACTURE, SELECTION, PURCHASE, LEASE, OWNERSHIP, POSSESSION, MODIFICATION, MAINTENANCE, CONDITION, OPERATION, USE, RETURN OR DISPOSITION OF THE EQUIPMENT. LESSEE AGREES TO REIMBURSE LESSOR FOR AND DEFEND LESSOR AGAINST ANY CLAIMS FOR SUCH LOSSES, DAMAGES, PENALTIES, CLAIMS, INJURIES, OR EXPENSES. THIS INDEMNITY CONTINUES EVEN AFTER THIS MASTER AGREEMENT HAS EXPIRED FOR ACTS OR OMISSIONS WHICH OCCURRED DURING THE TERM. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR LOSS OF USE), WHETHER OR NOT LESSOR SHALL BE OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH

POTENTIAL LOSS OR DAMAGE. THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS MASTER AGREEMENT.

18. MISCELLANEOUS. This Master Agreement (and all Schedules hereto) contains the entire agreement between Lessee and Lessor. THIS MASTER AGREEMENT MAY ONLY BE AMENDED BY ANOTHER WRITTEN DOCUMENT WHICH STATES THAT IT IS AMENDING THIS MASTER AGREEMENT AND WHICH IS PROPERLY EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF EACH PARTY. Notwithstanding the foregoing, Lessor and Lessee may enter into additional or supplemental Schedules for the Lease of additional pieces of equipment during the term of this Master Agreement. Any of such additional pieces of equipment shall be deemed Equipment governed by the terms and provisions of this Master Agreement, and shall be identified in the supplemental Schedules with a separate Schedule Number. This Master Agreement is a true master lease setting forth the governing terms and conditions for all items of equipment leased by Lessee from Lessor. Any and all prior discussions, negotiations, commitments or understandings related hereto, if any, are hereby merged herein. Any provision or part thereof of this Master Agreement which for any reason may be unenforceable in any jurisdiction shall not invalidate the remaining provisions or parts thereof of this Master Agreement, which shall remain in full force and effect. A delay and/or omission in exercising any right or remedy accruing to Lessor upon any breach or default by Lessee under this Master Agreement shall not be construed as a waiver of any such breach or default or of any similar breach or default thereafter occurring. This Master Agreement may be executed in counterparts, which collectively shall constitute one document.

19. MASTER AGREEMENT INTERPRETATION. For the purposes of this Master Agreement, the term Lessee shall be deemed to include all direct and indirect (through one or more intermediaries) parent companies, subsidiaries and/or affiliates of Lessee to which Lessor now, or in the future, may lease equipment. The terms and provisions of this Master Agreement, as amended or supplemented from time to time shall be binding upon Lessee and the respective parent company, subsidiary and/or affiliate. Each party hereto acknowledges that it has had ample opportunity to review and comment on this Master Agreement. This Master Agreement shall be read and interpreted according to its plain meaning and an ambiguity shall not be construed against either party. It is expressly agreed by the parties that the judicial rule of construction that a document should be more strictly construed against the draftsman thereof shall not apply to any provision of this Master Agreement. The headings contained herein are for reference only and are not a part of this Master Agreement and shall not be used in connection with the interpretation of this Master Agreement.

20. TERM OF MASTER AGREEMENT; SURVIVAL. This Master Agreement shall commence and be effective upon the execution hereof by both parties and shall continue in effect until terminated by either party by 30 days' prior written notice to the other. However, no termination of this Master Agreement pursuant to the preceding sentence shall be effective with respect to any Lease that commenced prior to such termination until the expiration or termination of such Lease and the satisfaction by Lessee and Lessor of all of their obligations hereunder with respect thereto. All representations, warranties and covenants made by Lessee and Lessor hereunder shall survive the termination of this Master Agreement and shall remain in full force and effect. All of Lessor's rights, privileges and indemnities under this Master Agreement or any Lease, to the extent they are fairly attributable to events or conditions occurring or existing on or prior to the expiration or termination of such Lease, shall survive such expiration or termination and be enforceable by Lessor and Lessor's successors and assigns.

21. LEASES NON-CANCELABLE; NET LEASES; WAIVER OF DEFENSES TO PAYMENT. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT EACH LEASE HEREUNDER SHALL BE NON-CANCELABLE, AND THAT EACH LEASE HEREUNDER IS A NET LEASE. LESSEE AGREES THAT IT HAS AN ABSOLUTE AND UNCONDITIONAL OBLIGATION TO PAY ALL PERIODIC LEASE PAYMENTS AND OTHER AMOUNTS WHEN DUE. LESSEE IS NOT ENTITLED TO ABATE OR REDUCE PERIODIC LEASE PAYMENTS OR ANY OTHER AMOUNT DUE, OR TO SET OFF ANY CHARGE AGAINST ANY SUCH AMOUNT. LESSEE HEREBY WAIVES ANY RECOUPMENT, CROSS-CLAIM, COUNTERCLAIM OR ANY OTHER DEFENSE AT LAW OR IN EQUITY TO ANY PERIODIC LEASE PAYMENT OR OTHER AMOUNT DUE WITH RESPECT TO ANY LEASE, WHETHER ANY SUCH DEFENSE ARISES OUT OF THIS MASTER AGREEMENT, ANY SCHEDULE, ANY CLAIM BY LESSEE AGAINST LESSOR, LESSOR'S ASSIGNEES OR SUPPLIER, OR OTHERWISE. IF THE EQUIPMENT IS NOT PROPERLY INSTALLED, DOES NOT OPERATE OR INTEGRATE AS REPRESENTED OR WARRANTED BY SUPPLIER OR IS

UNSATISFACTORY FOR ANY REASON WHATSOEVER, LESSEE SHALL MAKE ANY CLAIM ON ACCOUNT THEREOF SOLELY AGAINST SUPPLIER AND SHALL NEVERTHELESS PAY ALL SUMS DUE WITH RESPECT TO EACH LEASE.

LESSOR:	LESSEE:
By (Signature): _____	By (Signature): _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT 3

TRANSFER AGREEMENT

THIS AGREEMENT is entered into October 15, 2010 by and between **FAXTON-ST. LUKE'S HEALTHCARE (ST. LUKE'S CAMPUS)**, with its principal office located at 1656 Champlin Avenue, New Hartford, New York 13503 (the "Hospital") and **MOHAWK VALLEY EC, LLC**, with offices located at 116 Business Park Drive, Utica, New York 13502 (the "Facility").

RECITALS:

- A. The Hospital's St. Luke's Campus is a Medicare participating hospital capable of providing acute emergency medical care.
- B. The Facility is an Article 28-licensed ambulatory surgery center.
- C. The Hospital and the Facility desire to cooperate in order to assure continuity of care and treatment appropriate to the needs of each patient should a patient, while in the care of the Facility, need urgent or emergent services beyond the capabilities of the Facility.

NOW, THEREFORE, the parties hereby agree as follows:

1. Should the Facility determine that a patient in its care is in need of emergency or urgent medical care beyond the Facility's scope and capabilities and that transfer to a hospital is appropriate, the Hospital agrees to accept the transfer of the patient and to provide emergency and/or urgent medical care through its Emergency Department pursuant to the Hospital's normal policies and procedures and subject to this Agreement.
2. The Facility shall arrange for transportation of the patient to the Hospital. The Facility shall ensure that the method of physically transporting the patient is safe and medically approved by the responsible physician. The Hospital will accept responsibility for the patient upon arrival at the Hospital. Whenever a patient is transferred, the Facility shall undertake its best efforts to see that any and all personal property and any and all medical, clinical, admission, transfer and discharge information about the patient is transferred with the patient to the Hospital or provided shortly after the patient's arrival. Hospital shall arrange for all personal property so transferred to be stored safely in a place known and reasonably accessible to the patient or to a person or agency legally authorized to act in the patient's behalf.
3. Intake of the patients shall occur through the Hospital's Emergency Department, which shall be responsible for coordinating any and all other services offered by the Hospital as may be ordered for the patient.
4. Treatment of such transferred patient shall be determined by the Hospital's Emergency Department physician, who shall be a member of the Hospital's medical staff. The Emergency Department physician may, in his or her sole discretion, collaborate with the medical staff at the Facility to the degree appropriate for continuity, efficiency, economy and quality of care purposes and subject to the consent of the patient. Notwithstanding the foregoing, the parties acknowledge and agree that upon arrival at the Hospital's Emergency Department, the Emergency Department physician shall have sole authority with regard to the patient's care.
5. The Hospital meets the qualifications to accept transfers from the Facility set forth in 10 NYCRR 755.2(a) and 42 CFR 416.41.

6. Neither Hospital nor Facility shall be responsible for payment for care rendered by the Hospital or any individual physician to patients transferred from the Facility. Payment for care of patients transferred from the Facility shall be the sole responsibility of the patient and/or patient's third party payer. Notwithstanding the foregoing, patients transferred from the Facility shall be seen and treated without regard to their ability to pay.
7. Nothing in this Agreement is intended, nor should it be construed, as limiting the rights of either party to contract with any third party for the same or similar services.
8. Hospital and Facility shall each maintain a written copy of this Agreement in the appropriate administrator's office to be made available to the Department of Health upon request.
9. This Agreement shall commence on the date that the Facility begins commercial operations and shall be in effect for a period of 12 months thereafter. Thereafter, it shall automatically renew for an unlimited number of additional one-year terms, unless either party provides the other with written notice at least 30 days prior to the expiration of any one-year term that it does not consent to the automatic renewal. Notwithstanding the foregoing, this Agreement may be terminated at any time, with or without cause, by either party upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

FAXTON-ST. LUKE'S HEALTHCARE

By: [Signature]

Title: President / CEO

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: [Signature]
Member

TRANSFER AGREEMENT

THIS AGREEMENT is entered into October 15, 2010 and between **ST. ELIZABETH MEDICAL CENTER**, with its principal office located at 2209 Genesee Street, Utica, New York 13501 (the "Hospital"), and **MOHAWK VALLEY EC, LLC**, with offices located at 116 Business Park Drive, Utica, New York 13502 (the "Facility").

RECITALS:

- A. The Hospital is a Medicare participating hospital capable of providing acute emergency medical care.
- B. The Facility is an Article 28-licensed ambulatory surgery center.
- C. The Hospital and the Facility desire to cooperate in order to assure continuity of care and treatment appropriate to the needs of each patient should a patient, while in the care of the Facility, need urgent or emergent services beyond the capabilities of the Facility.

NOW, THEREFORE, the parties hereby agree as follows:

1. Should the Facility determine that a patient in its care is in need of emergency or urgent medical care beyond the Facility's scope and capabilities and that transfer to a hospital is appropriate, the Hospital agrees to accept the transfer of the patient and to provide emergency and/or urgent medical care through its Emergency Department pursuant to the Hospital's normal policies and procedures and subject to this Agreement.
2. The Facility shall arrange for transportation of the patient to the Hospital. The Facility shall ensure that the method of physically transporting the patient is safe and medically approved by the responsible physician. The Hospital will accept responsibility for the patient upon arrival at the Hospital. Whenever a patient is transferred, the Facility shall undertake its best efforts to see that any and all personal property and any and all medical, clinical, admission, transfer and discharge information about the patient is transferred with the patient to the Hospital or provided shortly after the patient's arrival. Hospital shall arrange for all personal property so transferred to be stored safely in a place known and reasonably accessible to the patient or to a person or agency legally authorized to act in the patient's behalf.
3. Intake of the patients shall occur through the Hospital's Emergency Department, which shall be responsible for coordinating any and all other services offered by the Hospital as may be ordered for the patient.
4. Treatment of such transferred patient shall be determined by the Hospital's Emergency Department physician, who shall be a member of the Hospital's medical staff. The Emergency Department physician may, in his or her sole discretion, collaborate with the medical staff at the Facility to the degree appropriate for continuity, efficiency, economy and quality of care purposes and subject to the consent of the patient. Notwithstanding the foregoing, the parties acknowledge and agree that upon arrival at the Hospital's Emergency Department, the Emergency Department physician shall have sole authority with regard to the patient's care.
5. The Hospital meets the qualifications to accept transfers from the Facility set forth in 10 NYCRR 755.2(a) and 42 CFR 416.41.

6. Neither Hospital nor Facility shall be responsible for payment for care rendered by the Hospital or any individual physician to patients transferred from the Facility. Payment for care of patients transferred from the Facility shall be the sole responsibility of the patient and/or patient's third party payer. Notwithstanding the foregoing, patients transferred from the Facility shall be seen and treated without regard to their ability to pay.
7. Nothing in this Agreement is intended, nor should it be construed, as limiting the rights of either party to contract with any third party for the same or similar services.
8. Hospital and Facility shall each maintain a written copy of this Agreement in the appropriate administrator's office to be made available to the Department of Health upon request.
9. This Agreement shall commence on the date that the Facility begins commercial operations and shall be in effect for a period of 12 months thereafter. Thereafter, it shall automatically renew for an unlimited number of additional one-year terms, unless either party provides the other with written notice at least 30 days prior to the expiration of any one-year term that it does not consent to the automatic renewal. Notwithstanding the foregoing, this Agreement may be terminated at any time, with or without cause, by either party upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ST. ELIZABETH MEDICAL CENTER

By: *Antonia Kethan*

Title: President/CEO

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

6. Neither Hospital nor Facility shall be responsible for payment for care rendered by the Hospital or any individual physician to patients transferred from the Facility. Payment for care of patients transferred from the Facility shall be the sole responsibility of the patient and/or patient's third party payer. Notwithstanding the foregoing, patients transferred from the Facility shall be seen and treated without regard to their ability to pay.
7. Nothing in this Agreement is intended, nor should it be construed, as limiting the rights of either party to contract with any third party for the same or similar services.
8. Hospital and Facility shall each maintain a written copy of this Agreement in the appropriate administrator's office to be made available to the Department of Health upon request.
9. This Agreement shall commence on the date that the Facility begins commercial operations and shall be in effect for a period of 12 months thereafter. Thereafter, it shall automatically renew for an unlimited number of additional one-year terms, unless either party provides the other with written notice at least 30 days prior to the expiration of any one-year term that it does not consent to the automatic renewal. Notwithstanding the foregoing, this Agreement may be terminated at any time, with or without cause, by either party upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

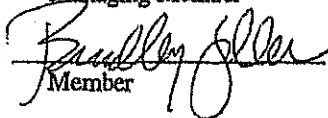
ST. ELIZABETH MEDICAL CENTER

By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: 
Member

ATTACHMENT 4

MOHAWK VALLEY EC, LLC

December 17, 2010

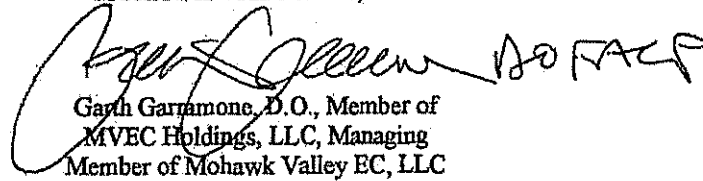
Re: Mohawk Valley Endoscopy Center Staffing Plan

Ladies and Gentlemen:

This letter will confirm that the staff of Mohawk Valley Endoscopy Center, as identified in the attached Schedule 13B, will be employees of Mohawk Valley EC, LLC. Mohawk Valley EC, LLC plans to contract with third parties for certain billing, accounting and maintenance services.

Very truly yours,

MOHAWK VALLEY EC, LLC



Garth Garramone, D.O., Member of
MVEC Holdings, LLC, Managing
Member of Mohawk Valley EC, LLC

**New York State Department of Health
Certificate Of Need Application**

Schedule 13B

Schedule 13 B. Staffing

Table 13B - 1:

For Establishment and/or Construction Requiring Full/Administrative Review

XX Total Project

___ Subproject number

A	B	C	D
Number of FTEs to the Nearest Tenth			
Staffing Categories	Current Year	First Year of Implementation (2010/11)	Third Year of Implementation (2012/13)
	(1)	(2)	(3)
1. Management & Supervision	N/A	2.2	2.2
2. Technician & Specialist	N/A	3.0	3.0
3. Registered Nurses	N/A	9.0	11.0
4. Licensed Practical Nurses	N/A	0.0	0.0
5. Aides, Orderlies & Attendants	N/A	0.0	0.0
6. Physicians	N/A	0.0	0.0
7. PGY Physicians	N/A	0.0	0.0
8. Physicians' Assistants	N/A	0.0	0.0
9. Nurse Practitioners	N/A	0.0	0.0
10. Nurse Midwife	N/A	0.0	0.0
11. Social Workers and Psychologist**	N/A	0.0	0.0
12. Physical Therapists and PT Assistants	N/A	0.0	0.0
13. Occupational Therapists and OT Assistants	N/A	0.0	0.0
14. Speech Therapists and Speech Assistants	N/A	0.0	0.0
15. Other Therapists and Assistants	N/A	0.0	0.0
16. Infection Control, Environment and Food Service	N/A	1.0	1.0
17. Clerical & Other Administrative	N/A	4.0	4.0
18. Other Employee Classifications (please specify)	N/A	N/A	N/A
Accounting	N/A	0.5	0.5
19. TOTAL NUMBER OF EMPLOYEES	0.0	19.7	21.7

* Last complete year prior to submitting application

Use only for RHCF and D & T Center proposals

ATTACHMENT 5

MOHAWK VALLEY EC, LLC

December 17, 2010

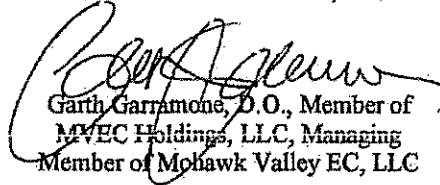
Re: Mohawk Valley Endoscopy Center

Ladies and Gentlemen:

This letter will confirm that the Mohawk Valley Endoscopy Center's clinical space will be used exclusively by Mohawk Valley EC, LLC.

Very truly yours,

MOHAWK VALLEY EC, LLC

 DO FACD
Garth Garramone, D.O., Member of
MVEC Holdings, LLC, Managing
Member of Mohawk Valley EC, LLC

ATTACHMENT 6

QUALITY OVERSIGHT AGREEMENT

THIS AGREEMENT is entered into on December 10, 2010 by and between MOHAWK VALLEY EC, LLC ("MVEC") and MMAE, LLC ("MMAE").

RECITALS:

A. MVEC's application to establish and construct a single specialty ambulatory surgery center at 116 Business Park Drive, Utica, New York (the "Surgery Center") has been approved by New York Public Health Council subject to the satisfaction of certain contingencies including, without limitation, entering into an agreement with an outside independent agency to provide certain reports to the Department of Health.

B. MMAE is a limited liability company whose sole member is Margaret Alteri who has over 20 years of experience in the operation of free-standing ambulatory surgery centers and is independent of MVEC.

C. The parties wish to enter into this Agreement to provide for the provision of quality oversight functions at the Surgery Center.

NOW, THEREFORE, the parties agree as follows:

1. Services. During the term of this Agreement MMAE shall provide the following quality oversight functions:
 - a. Assist the Surgery Center in the development of a Quality Assurance Program and Plan that addresses the unique needs of the Surgery Center;
 - b. Educate staff as to data retrieval, case review and reporting outcomes;
 - c. Assist in identification of appropriate topics and subjects for Quality Assurance review and reporting;
 - d. Assist in the development of monitoring tools for data collection and reporting;
 - e. Perform the Quality Assurance reviews in accordance with the facility's Quality Assurance plan;
 - f. Assure that the results and outcomes of all Quality Assurance activities are reported to the Medical Director and the Members and that corrective action plans are consistent with the findings of the reviews; and
 - g. Serve as a resource to MVEC reviewing all Quality Assurance activities.
2. Compensation. MVEC shall pay MMAE at the rate of \$1,200 per year payable in 12 monthly installments of \$100 each beginning on the Effective Date described in Section 3 below.
3. Term and Termination. This Agreement shall take effect on the date (the "Effective Date") which is designated by the parties but no later than 30 days prior to commencement of commercial operations at the Surgery Center and shall continue for a

period of one year. Thereafter, this Agreement shall automatically renew for additional one year terms unless either party has elected not to renew upon providing at least 60 days prior written notice to the other party. Either party may terminate this Agreement upon 30 days prior written notice to the other party.

4. Performance of Services. Unless otherwise agreed by the parties all services to be provided by MMAE hereunder shall be provided by Margaret M. Alteri or by an individual supervised by her.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: 
Member

MMAE, LLC

By: _____
Margaret M. Alteri, President

period of one year. Thereafter, this Agreement shall automatically renew for additional one year terms unless either party has elected not to renew upon providing at least 60 days prior written notice to the other party. Either party may terminate this Agreement upon 30 days prior written notice to the other party.

4. Performance of Services. Unless otherwise agreed by the parties all services to be provided by MMAE hereunder shall be provided by Margaret M. Alteri or by an individual supervised by her.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

MMAE, LLC

By: Margaret M. Alteri
Margaret M. Alteri, President

ATTACHMENT 7

MOHAWK VALLEY ENDOSCOPY CENTER MEDICAL STAFF PROTOCOL

1. All members of the Mohawk Valley Endoscopy Center Medical Staff shall be a member in good standing on the active medical staff of at least one acute care hospital.
 2. As a condition to becoming a member of the Mohawk Valley Endoscopy Center Medical Staff each physician shall, in writing, (a) identify each acute care hospital at which he or she maintains medical staff privileges; (b) represent that he or she is a member in good standing on such medical staff or staffs; (c) agree to notify Mohawk Valley Endoscopy Center promptly in the event that such physician is no longer a member in good standing on such medical staff or staffs; and (d) authorize Mohawk Valley Endoscopy Center to request from each acute care hospital confirmation that the physician is in good standing on its medical staff.
-

ATTACHMENT 8

REPORTING AGREEMENT

THIS AGREEMENT is entered into on December 10, 2010 by and between MOHAWK VALLEY EC, LLC ("MVEC") and MMAE, LLC ("MMAE").

RECITALS:

A. MVEC's application to establish and construct a single specialty ambulatory surgery center at 116 Business Park Drive, Utica, New York (the "Surgery Center") has been approved by New York Public Health Council subject to the satisfaction of certain contingencies including, without limitation, entering into an agreement with an outside independent agency to provide certain reports to the Department of Health.

B. MMAE is a limited liability company whose sole member is Margaret Alteri who has over 20 years of experience in the operation of free-standing ambulatory surgery centers and is independent of MVEC.

C. The parties wish to enter into this Agreement to provide for the satisfaction of MVEC' reporting requirements to the Department of Health.

NOW, THEREFORE, the parties agree as follows:

1. Services. During the term of this Agreement MMAE shall provide the following annual reports to the Department of Health beginning the second year of operation of the Surgery Center:
 - a. Data showing actual utilization including procedures;
 - b. Data showing breakdown of visits by payer source;
 - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided; and
 - f. Number of nosocomial infections recorded during the year in question.
2. Access to Data. MVEC shall provide MMAE with access to all data required for MMAE's timely preparation and submission of the annual reports to the Department of Health.
3. Compensation. MVEC shall pay MMAE \$500 plus reasonable out of pocket expenses payable within 10 days following delivery of an invoice and MMAE's completion and submission of the annual report.
4. Term and Termination. Either party shall have the right to terminate this Agreement at any time upon providing 30 days prior written notice to the other party.

5. Performance of Services. Unless otherwise agreed by the parties all services to be provided by MMAE hereunder shall be provided by Margaret M. Alteri or by an individual supervised by her.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: 
Member

MMAE, LLC

By: _____
Margaret M. Alteri, President

5. Performance of Services. Unless otherwise agreed by the parties all services to be provided by MMAE hereunder shall be provided by Margaret M. Alteri or by an individual supervised by her.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

MMAE, LLC

By: Margaret M. Alteri
Margaret M. Alteri, President

ATTACHMENT 9

**ORGANIZATIONAL MISSION STATEMENT
OF
MOHAWK VALLEY ENDOSCOPY CENTER**

Unanimously Adopted by Mohawk Valley EC, LLC Members

Mohawk Valley Endoscopy Center has been formed, and will be operated to help meet the needs of all patients in our community by providing convenient, specialized and high-quality endoscopy services. Mohawk Valley Endoscopy Center will provide services to individuals regardless of the individual's ability to pay for such services and will accept all sources of payment, including Medicare and Medicaid. Mohawk Valley Endoscopy Center will develop policies and procedures to assure that charity care is available to those who cannot afford to pay.

ATTACHMENT 10

MOHAWK VALLEY EC, LLC

October 27, 2009

State of New York Health Department
Corning Tower
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12237

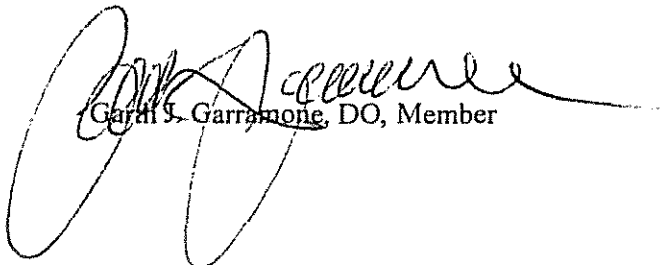
Re: Mohawk Valley EC, LLC

Ladies and Gentlemen:

This letter will confirm that in structuring the Mohawk Valley EC, LLC ambulatory surgery center project we have considered with our legal counsel both the Federal and New York State anti-kickback and self-referral laws. On this basis we have concluded that proceeding with the project is appropriate.

Very truly yours,

MOHAWK VALLEY EC, LLC



Garth S. Garramone, DO, Member

ATTACHMENT 11

**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 214 of the Limited Liability Company Law

1. The name of the limited liability company (the "Company") is Mohawk Valley EC, LLC.
2. The date of the filing of the Articles of Organization is October 15, 2009.
3. The amendments effected by this Amended and Restated Articles of Organization are as follows:
 - a. To specify the address of the principal office of the Company;
 - b. To subject any change in the management structure of the Company to the prior approval of the New York State Department of Health;
 - c. To limit the powers and purposes of the Company to the ownership and operation of a single specialty ambulatory surgery center providing endoscopy services licensed pursuant to New York Public Health Law Article 28; and
 - d. To subject changes to membership interests and voting rights in the Company to the provisions set forth in New York Public Health Law Section 2801-a(4)(b).
4. To accomplish amendment 3(a), as stated above, Article 2 of the Articles of Organization is hereby amended to read as follows :

"2. The principal office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502."
5. To accomplish amendment 3(b), as stated above, Article 4 of the Articles of Organization of the Company is hereby amended to read as follows:

"4. The Company shall be managed by its Members. Neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the approval of the New York Department of Health."
6. To accomplish amendment 3(c), as stated above, a new Article 5 of the Articles of Organization is hereby added to read as follows:

"5. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center exclusively providing gastroenterology services licensed under Article 28 of the Public Health Law known as "Mohawk Valley Endoscopy Center" located at 116 Business Park Drive, Utica, New York 13502."
7. To accomplish amendment 3(d), as stated above, a new Article 6 of the Articles of Organization is hereby added to read as follows:

"6. Notwithstanding anything in the articles of organization or operating agreement to the contrary, any transfer, assignment or other disposition of any membership interest

or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.”

8. The Articles of Organization are hereby restated to set forth its entire text as amended:

**ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 203 of the Limited Liability Company Law

1. The name of the limited liability company (the “Company”) is: Mohawk Valley EC, LLC.
2. The principal office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502.
3. The Secretary of State is designated as agent of the Company 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 Company served upon the Secretary is:

c/o the Company
110 Business Park Drive
Utica, New York 13502

4. The Company shall be managed by its Members. Neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the approval of the New York Department of Health.
5. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center exclusively providing gastroenterology services licensed under Article 28 of the Public Health Law known as “Mohawk Valley Endoscopy Center” located at 116 Business Park Drive, Utica, New York 13502.
6. Notwithstanding anything in the Articles of Organization or Operating Agreement to the contrary, any transfer, assignment or other disposition of any membership interest or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.

IN WITNESS WHEREOF, these Amended and Restated Articles of Organization have been subscribed this 17th day of October, 2010.

MVEC HOLDINGS, LLC,
Managing Member of Mohawk Valley EC, LLC

By: 
Bradley Sklar, M.D., Member

ATTACHMENT 12

**MOHAWK VALLEY EC, LLC
AMENDED AND RESTATED OPERATING AGREEMENT**

THIS OPERATING AGREEMENT is entered into as of October 15, 2010 to be effective on the Effective Date, by and among MVEC HOLDINGS, LLC ("Holdings"), FAXTON ST. LUKE'S HEALTHCARE ("FSLH") and ST. ELIZABETH MEDICAL CENTER ("SEMC") and MOHAWK VALLEY EC, LLC (the "Company").

RECITALS:

A. The Company's original members have entered into an Operating Agreement dated as of November 10, 2009 (the "Original Operating Agreement").

B. In connection with the admission of the Hospital Members, the restructuring of the physician ownership component of the Company and the receipt of PHC Approval, the Members and the Company wish to amend and restate the Original Operating Agreement as set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Company Law, as the same may be amended from time to time.
- 1.2. "Affiliate" shall mean, when used with reference to a specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person, (b) any Person that is an officer, partner or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of the specified Person and (d) any relative or spouse of the specified Person.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 6.6 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the four operating room, single-specialty ambulatory surgery center specializing in gastroenterology to be located at 116 Business Park Drive, Utica, New York 13502.

- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean Mohawk Valley EC, LLC, a New York limited liability company and its successors.
- 1.10. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP or its successors.
- 1.11. "PHC Approval" shall mean final approval by the Public Health Council of the Health Department of the establishment of the Company.
- 1.12. "Effective Date" shall mean the date on which the Company has received the PHC Approval and has filed its Amended and Restated Articles of Organization with the Secretary of State in the form approved by the Health Department.
- 1.13. "Health Department" shall mean the New York State Department of Health.
- 1.14. "Hospital Member(s)" shall mean FSLH and/or SEMC.
- 1.15. "Managing Member" shall mean Holdings.
- 1.16. "Member(s)" shall mean Holdings and the Hospital Members.
- 1.17. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and the right, if any, to vote or participate in management of the Company.
- 1.18. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined on a cash basis at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.19. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.20. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.21. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.
- 1.22. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.

- 1.23. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.24. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.25. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.26. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or a part of a Member's Membership Interest.
- 1.27. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.28. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 10.1 hereof.
- 2.2. Name. The name of the Company shall be "Mohawk Valley EC, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed for the sole purpose of constructing, owning and operating a four operating room, single-specialty ambulatory surgery center exclusively providing gastroenterology services located in Oneida County at 116 Business Park Drive, Utica, New York.
- 2.4. Effective Date of Agreement. This Amended and Restated Operating Agreement shall be effective on the Effective Date.
- 2.5. Superseding Effect. This Amended and Restated Operating Agreement shall amend, restate and supersede the Original Operating Agreement in its entirety.

3. ESTABLISHMENT OF CLASSES OF MEMBERS

- 3.1. Establishment of Membership Classes. The Company shall have two classes of Members: the Managing Member and the Hospital Members. Except for management and voting rights, the relative rights, powers, preferences and obligations of the Members are identical.
- 3.2. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.

4. MANAGEMENT AND VOTING RIGHTS

- 4.1. Management of the Company. The business and affairs of the Company shall be managed by the Managing Member. Except as set forth in Section 4.2, and notwithstanding anything to the contrary contained in the Act, all decisions with respect to the Company shall be made exclusively by the Managing Member. The Managing Member shall have the duty to conduct the affairs of the Company in the best interests of the Company. The management structure or the provisions setting forth such structure may not be deleted, modified or amended without the prior approval of the Health Department.
- 4.2. Hospital Member Voting Rights. Notwithstanding anything to the contrary contained in this Agreement or in the Act, except for the voting rights identified in subsections (a) and (b) below (the "Hospital Member Voting Rights"), the Hospital Members have no voting rights and all decisions of every nature concerning the Company shall be made by the Managing Member.
 - a. The following decisions shall require, in addition to the approval of the Managing Member, the approval of both Hospital Members:
 - i. Amend the Center's operating certificate to (i) increase the number of operating rooms in the Center beyond four or (ii) provide services other than gastroenterology services;
 - ii. Amend the Company's Articles of Organization or this Agreement;
 - iii. Incur individual capital expenditures (excluding medical equipment) in excess of \$100,000 or total capital expenditures, including medical equipment, in excess of \$250,000 per year following completion of the construction and equipping of the Center;
 - iv. Make a call for mandatory additional capital contributions;
 - v. Issue additional Units of Membership Interest; and
 - vi. Except as provided in Section 9.4, admit a Person as a Member and issue such Person Units of Membership Interest.
 - b. Except for those decisions identified in subsection (a) above which require the affirmative approval of both Hospital Members in addition to the approval of the Managing Member, the

affirmative vote of Members owning a majority of outstanding Units shall be required to approve any of the actions listed in 10 NYCRR Section 405.1(c).

- 4.3. No Authority. No act of any Member shall bind the Company unless such act has been authorized by the Managing Member.
- 4.4. No Exclusive Duty. The Managing Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Managing Member or to the income or proceeds derived therefrom. No Member shall incur any liability to the Company or to any of the other Members as a result of engaging in any other business or venture.
- 4.5. Transactions with Affiliates. The Company may enter into contracts or transactions with Affiliates of the Managing Member including, without limitation, DDM, so long as (a) the Company pays fair market consideration for items provided or services rendered and (b) any such contract or transaction is promptly disclosed to the Hospital Members. The Hospital Members acknowledge and agree that the Company is paying fair market rent under the lease between the Company and 116 Business Park Associates, LLC and fair market compensation under the Medical Director Services Agreement between the Company and DDM. The Hospital Members further acknowledge and agree that Affiliates of the Managing Member have no obligation to provide items or services at a discount or on terms more favorable than those generally provided by third parties. For purposes of Section 411(b) of the Act any contract or transaction that satisfies the requirements of subsection (a) and (b) above shall conclusively be deemed to be fair and reasonable as to the Company.
- 4.6. Limitation of Liability. The Managing Member shall have no personal liability to the Company or the Members for damages from any breach of duty in such capacity; provided, however, that the foregoing shall not eliminate liability of the Managing Member for a judgment or other final adjudication adverse to the Managing Member establishing that the Managing Member's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that the Managing Member personally gained in fact a financial profit or other advantage to which the Managing Member was not legally entitled.

5. OPERATIONAL MATTERS

- 5.1. Operations Committee. The Managing Member shall establish an Operations Committee which shall provide advice and recommendations to the Managing Member on matters including operations, personnel, budgeting, strategic planning, compliance and payer relationships. Members of the Operations Committee shall include one representative from each of the Hospital Members and three physician members of the Managing Member. The Operations Committee shall meet on at least a quarterly basis.
- 5.2. Compliance. The Operations Committee or a subcommittee of the Operations Committee shall serve as the Compliance Committee for the Center. The Compliance Committee shall designate a compliance officer and shall develop a compliance plan for the Center. At the request of any

Member, which shall not be made more frequently than annually, the Company shall engage a third party to undertake a compliance audit.

- 5.3. Government Payers. The Center shall participate with all government or government-sponsored payers.
- 5.4. Charity Care Policy. The Center shall adopt a charity care policy.
- 5.5. Certain Referrals. The Hospital Members shall not take any actions or otherwise encourage its affiliated physicians to refer patients to the Center or to any of the physician members of the Managing Member ("Affiliated Member Physicians"). The Hospital Members shall not track or otherwise measure the referrals of its affiliated physicians to the Center or to any of the Affiliated Member Physicians. Compensation, if any, paid by the Hospital Members to its affiliated physicians pursuant to employment or personal services contracts shall not be not directly or indirectly related to the volume or value of referrals to the Center or to the Affiliated Member Physicians.

6. MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS

6.1. Capital Contributions.

- a. The Members shall make Capital Contributions to the Company in the amounts and at the times set forth on Exhibit A.
- b. Credit Against Capital Contribution Obligation. All payments made by DDM or another Affiliate of the Managing Member for the benefit of the Company including fees of architects, consultants, attorneys, accountants and other advisors, filing fees, construction costs, deposits and other out-of-pocket expense paid by DDM or another Affiliate shall be credited against the Managing Member's Capital Contribution obligation and shall be deemed to be a Capital Contribution made by the Managing Member.

6.2. Issuance of Units. Upon payment of their respective Phase One Capital Contributions, each Member shall own the number of Units of Membership Interest set forth on Exhibit A, which Exhibit may be modified from time-to-time to reflect changes in ownership of Units or the admission of new Members. Such modifications shall not be considered amendments to this Agreement.

6.3. Remedies for Failure to Fund. If any Member shall fail to pay its Capital Contribution when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 10 days in which to cure such default. If, after 10 days, the Defaulting Member has not cured such default, then (a) the Managing Member may exercise its option to purchase the Defaulting Member's Membership Interest pursuant to Section 9.6; (b) the Company may apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) the Company may enforce the Defaulting Member's obligation to pay its Capital Contribution and recover attorneys' fees and costs of collection in addition to interest at 15% per annum accruing from the date the Capital Contribution was first required to have been paid.

- 6.4. No Mandatory Additional Capital Contributions. No Member shall be required to make additional Capital Contributions to the Company without the approval of all Members. If additional funds are necessary or desirable to accomplish the purposes or satisfy the obligations of the Company, the Managing Member may, among other things, offer all Members the opportunity to make loans or preferred investments in the Company with such interest rate, repayment terms and preferences as may be necessary to attract the required funds.
- 6.5. Guaranties.
- a. Each Member shall execute and deliver one or more guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center in such amounts, at such times and in such form as directed by the Managing Member (a "Member Guaranty"); provided, however, that the percentage of the obligations guaranteed by the Hospital Members may not exceed their respective Sharing Ratios (20%). If any Member shall fail to deliver its Member Guaranty within 10 days following request, the Member shall be in default and (a) the Managing Member may exercise its option to purchase under Section 9.6 or (b) the Company enforce the Member's obligation to deliver its Member Guaranty and recover attorneys' fees in connection with any enforcement action.
 - b. In the event one or more Members who have delivered a Member Guaranty pays in excess of its share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection.
- 6.6. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.
- 6.7. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.
- 6.8. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

7. ALLOCATIONS AND DISTRIBUTIONS

- 7.1. Allocation of Net Profits and Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.
- 7.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 7.3. Distributions. Net available cash flow of the Company shall be distributed to the Members pro rata to their Sharing Ratios at such times and in such amounts as the Managing Member shall determine.
- 7.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 7.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 7.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 7.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 7.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.
- 7.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit

balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.

- 7.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.
- 7.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 7.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 7.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 7.14. Returns and Other Elections. The Managing Member shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Managing Member.
- 7.15. Audited Financial Statements. The Company shall cause its financial statements to be audited annually by the Company's accounting firm.

8. BOOKS AND RECORDS

- 8.1. Books and Records. The Company shall keep and maintain at its principal office adequate books and records setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company. Any Member or its designated representative shall have the right, at any reasonable time and at its own expense to have access to and inspect and copy the contents of such books or records.
- 8.2. Reports. Within a reasonable period after the end of each quarter, each Member shall be furnished with a report containing a balance sheet as of the end of such quarter and statement of earnings. Annually, the Members will receive a balance sheet, statement of earnings, and changes in Member's equity and statement of cash flow for the year ended.
- 8.3. Tax Information. Necessary tax information shall be delivered to each Member as soon after the end of each fiscal year of the Company as is practicable, but no later than April 1.

9. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 9.1. Covenant Against Withdrawal. Except for Permitted Withdrawals, no Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 9.2. Permitted Withdrawals by Hospital Members. Upon the occurrence of any regulatory development, investigation, audit or other ruling which makes the ownership of a Membership Interest by a Hospital Member illegal under the federal anti-kickback statute, the Stark law and regulations or some other federal or state law affecting joint ventures or upon the occurrence of any regulatory development, investigation, audit or other ruling which causes the Hospital Member's ownership of its Membership Interest to jeopardize its tax-exempt status for its continued participation in the joint venture, the affected Hospital Member or Members may withdraw upon providing 90 days advance written notice to the Company. Upon such withdrawal the Managing Member shall purchase the Membership Interest of the withdrawing Hospital Member at the price and on the terms set forth in Sections 9.7 and 9.8 below.
- 9.3. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by the Managing Member and the Hospital Members and (b) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation, reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:
- a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law.
 - b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
 - c. The transferee shall have adopted and approved in writing this Agreement.
- 9.4. Permitted Transfers. Holdings shall have the unrestricted right to Transfer Units to one or more its members at such price and on such terms as Holdings may determine. Upon such Transfer and subject to the satisfaction of the requirements set forth in Section 9.3, such transferees shall automatically become a Member. Holdings acknowledges that its operating agreement requires its members to be current or former partners or employed physicians of DDM.
- 9.5. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.

- 9.6. Option to Purchase Membership Interest. If any Member (i) is adjudicated a bankrupt, voluntary or involuntary; (ii) makes an assignment for the benefit of creditors; (iii) applies for a judicial dissolution of the Company under the Act; (v) is no longer eligible to own an interest in an Article 28 ambulatory surgery center; or (vi) fails to timely fund its Capital Contribution obligation;; (each, a "Triggering Event"), such Member (an "Offering Member") shall be deemed to have offered to sell its entire Membership Interest to the Company (if the Offering Member is a Hospital Member it shall be deemed to have offered to sell its entire Membership Interest to the other Hospital Member) on the following terms:
- a. The option to purchase shall be exercised not later than 180 days following notice of any such Triggering Event.
 - b. The purchase price shall be established pursuant to Section 9.7 and paid in the manner provided in Section 9.8.
- 9.7. Calculation of Purchase Price. The purchase price for a Member's Membership Interest purchased by the Company or the Managing Member hereunder (the "Purchase Price") shall be determined by multiplying the Company's Book Value by the selling Member's Sharing Ratio; provided, however, that if the purchase is being made under Section 9.6 the Purchase Price shall be reduced by 30%. As used herein, "Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Triggering Event. Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:
- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
 - b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
 - c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
 - d. The Company shall include as an asset 100% of the value of its accounts receivable valued by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period; and
 - e. There is no goodwill in the Company, and no value shall be claimed for or attributed to it in determining the Purchase Price.

- 9.8. Payment of Purchase Price. The Purchase Price shall be paid as follows: (a) 20% in certified funds at closing and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the cash portion of the Purchase Price is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 36 equal consecutive monthly installments of principal and interest commencing 30 days following the closing date. The promissory note shall be unsecured and shall provide that in case of default all principal and accrued interest shall become immediately due and payable at the holder's election. If the Company is the purchaser it shall have the right to set-off any amounts owing by the Member to the Company against the Purchase Price.
- 9.9. Closing. The closing of the purchase of a Membership Interest hereunder shall take place at the principal office of the Company. At closing the purchaser shall deliver the Purchase Price and the selling Member shall execute and deliver assignments legally sufficient to transfer the Membership Interest free and clear of all taxes, debts, claims, liens or encumbrances. The closing shall occur on the date designated by the Company.
- 9.10. Power of Attorney. Each Member appoints the Company as its agent and attorney-in-fact to execute and deliver all documents needed to convey its Membership Interest, if such selling Member is not present at the closing. This power of attorney is coupled with an interest.

10. DISSOLUTION AND TERMINATION

- 10.1. Dissolution of the Company. The Company may be dissolved by the Managing Member.
- 10.2. Procedure on Liquidation. Upon the dissolution of the Company, the Managing Member shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 10.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.
- 10.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:
- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
 - b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;

- c. Third, to Members in accordance with their positive Capital Account balances.

11. INDEMNIFICATION

11.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Managing Member or a Hospital Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Managing Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company shall maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

11.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 11.1.

12. DISPUTE RESOLUTION

12.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

13. GENERAL PROVISIONS

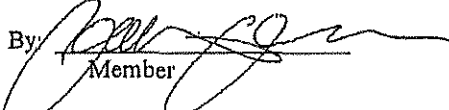
- 13.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.
- 13.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.
- 13.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 13.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 13.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 13.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 13.7. Governing Law. This Agreement shall be governed by and construed in accordance, with the laws of the State of New York, with venue of any suit, action, or legal proceeding arising under, or relating to this Agreement being in a court of competent jurisdiction located in Oneida County, New York.
- 13.8. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.
- 13.9. Waiver of Action for Partition. In addition to being subject to Section 607 of the Act, each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 13.10. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.

- 13.11. Contract Modifications for Prospective Legal Events. In the event any state or Federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party hereto in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, the Members shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements among the Members.
- 13.12. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 13.13. Classification as Partnership. The Company intends to be classified as a partnership for Federal income tax purposes only. The Members agree to take such actions, make such elections and, if required, amend this Operating Agreement to assure that such classification is maintained.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: 
Member

FAXTON ST. LUKE'S HEALTHCARE

By: _____

Title: _____

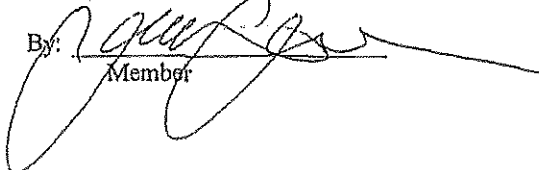
ST. ELIZABETH MEDICAL CENTER

By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: 
Member

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: _____
Member

FAXTON ST. LUKE'S HEALTHCARE

By: *Scott H. Perra*
Title: Scott H. Perra, FACHE
President/CEO

ST. ELIZABETH MEDICAL CENTER

By: _____
Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: _____
Member

FAXTON ST. LUKE'S HEALTHCARE

By: _____

Title: _____

ST. ELIZABETH MEDICAL CENTER

By: *Amber Kenner*

Title: *President CEO*

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

EXHIBIT A

<u>Member</u>	<u>Maximum Capital Contrib. Obligation</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
MVEC Holdings, LLC	\$660,000	60	60%
Faxton St. Luke's Healthcare	\$220,000	20	20%
St. Elizabeth Medical Center	<u>\$220,000</u>	<u>20</u>	<u>20%</u>
	\$1,100,000	100	100%

The Members shall make the following Capital Contributions within 10 days following the Effective Date of this Agreement:

MVEC Holdings, LLC:	\$600,000
Faxton St. Luke's Healthcare:	\$200,000
St. Elizabeth Medical Center:	\$200,000

If required in connection with the construction of the Center, the Members shall pay the balance of their maximum Capital Contribution obligation within 10 days following request by the Managing Member.

ATTACHMENT 13

FILING RECEIPT

=====

ENTITY NAME: MVEC HOLDINGS, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ONEI

=====

FILED: 09/29/2010 DURATION: ***** CASH#: 100929000626 FILM #: 100929000579

FILER:

EXIST DATE

WOOD & SMITH, P.C.
ONE LINCOLN CENTER SUITE 1110

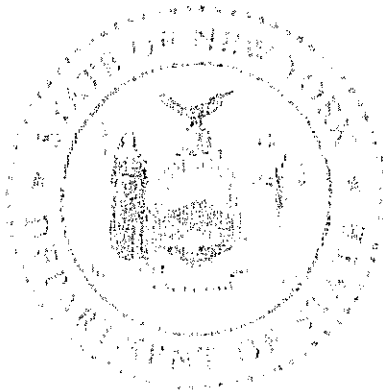
09/29/2010

SYRACUSE, NY 13202

ADDRESS FOR PROCESS:

THE LLC
110 BUSINESS PARK DRIVE
UTICA, NY 13502

REGISTERED AGENT:



=====

SERVICE COMPANY: NATIONWIDE INFORMATION SERVICES, INC. SERVICE CODE: 27 *

FEES	235.00	PAYMENTS	235.00
FILING	200.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	235.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

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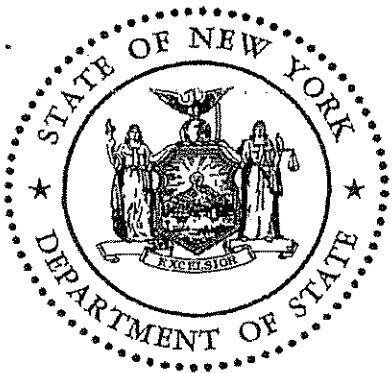
08C19185

DOS-1025 (04/2007)

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on September 30, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

100929000 579

ARTICLES OF ORGANIZATION
OF
MVBC HOLDINGS, LLC

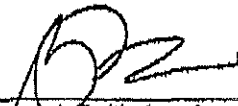
Under Section 203 of the Limited Liability Company Law

- 1. The name of the limited liability company is: MVBC Holdings, LLC
- 2. The office of the limited liability company is to be located in the County of Oneida, State of New York.
- 3. The Secretary of State is designated as agent of the limited liability company 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 limited liability company served upon the Secretary is:

o/o the Company
110 Business Park Drive
Utica, New York 13502

- 4. The limited liability company shall be managed by its members.
- 5. All members of the limited liability company shall be natural persons and this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.
- 6. Transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-(4)(b) of the Public Health Law and this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

IN WITNESS WHEREOF, these Articles of Organization have been subscribed to this 28th day of September 2010 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.



Bruce A. Smith, Organizer
Wood & Smith, P.C.
One Lincoln Center, Suite 1110
110 West Fayette Street
Syracuse, New York 13202

SEP. 29. 2010 9:55AM

NO. 030 P. 4

100929000579

ARTICLES OF ORGANIZATION

OF

MVEC HOLDINGS, LLC

Under Section 203 of the Limited Liability Company Law

RECEIVED

2010 SEP 29 AM 10:14

Filer: Wood & Smith, P.C.
One Lincoln Center, Suite 1110
110 West Fayette Street
Syracuse, New York 13202

Ref. #08C19185

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 29 2010

TAX \$

BY: *[Signature]*

DRAWDOWN
NIS-27

FILED
2010 SEP 29 PM 1:58

[Handwritten initials]

ATTACHMENT 14

**OPERATING AGREEMENT
OF
MVEC HOLDINGS, LLC**

THIS OPERATING AGREEMENT is entered into on October 6, 2010 by and among STANLEY P. WEISELBERG, M.D., NORMAN R. NESLIN, M.D., ROBERT R. PAVELOCK, M.D., BRADLEY F. SKLAR, M.D., RICHARD CHERPAK, M.D., GARTH J. GARRAMONE, D.O., BRETT GANDHI, M.D. and MVEC HOLDINGS, LLC (the "Company").

In consideration of the mutual promises contained herein the parties hereby agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Companies Law, as the same may be amended from time to time.
- 1.2. "Additional Funding Requirement" shall mean additional funds called pursuant to Section 4.2 hereof.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 4.5 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the single-specialty ambulatory surgery center specializing in gastroenterology located at 116 Business Park Drive, Utica, New York 13502 owned and operated by Mohawk Valley EC, LLC.
- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean MVEC Holdings, LLC, a New York limited liability company and its successors.
- 1.10. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP or its successors.
- 1.11. "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.

- 1.12. "Initial Capital Contributions" shall mean the Capital Contributions to be made by the Members as provided in Section 4.1.
- 1.13. "Majority Vote of the Members" shall mean the affirmative vote of a majority of all Members.
- 1.14. "Member" shall mean Stanley P. Weiselberg, M.D., Norman R. Neslin, M.D., Robert R. Pavelock, M.D., Bradley F. Sklar, M.D., Richard Cherpak, M.D., Garth J. Garamone, D.O., Brett Gandhi, M.D. and such other Persons who are admitted to the Company as additional or substitute Members.
- 1.15. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and any right to vote or participate in management of the Company.
- 1.16. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.17. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.18. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.19. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.
- 1.20. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.
- 1.21. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.22. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.23. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.24. "Supermajority Vote of the Members" shall mean the affirmative vote of a number of Members equal to the total number of Members minus two.

- 1.25. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or any part of a Member's Membership Interest.
- 1.26. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.27. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 7.1 hereof.
- 2.2. Name. The name of the Company shall be "MVEC Holdings, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed to (a) own a membership interest in, and to be the Managing Member of Mohawk Valley, EC, LLC and (b) carry on, conduct or transact any business or other activities which a limited liability company formed under the Act may carry on, conduct or transact.

3. MEMBERS; MANAGEMENT OF COMPANY

- 3.1. Membership Interest. The number of Units of Membership Interest owned by each Member and their respective Sharing Ratios is set forth on Exhibit A attached hereto.
- 3.2. Membership Qualifications.
 - a. Members shall be natural persons. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**
 - b. Members shall be current or former partners or physician employees of DDM.
- 3.3. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.
- 3.4. Management of the Company. The business and affairs of the Company shall be managed by the Members. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**

3.5. Action by Members.

- a. For voting purposes each Member shall have one vote.
- b. The following actions shall require a Supermajority Vote of the Members: (i) adopt, amend, restate or revoke the Articles of Organization or this Agreement; (ii) approve the dissolution of the Company; (iii) approve the sale, exchange or lease of all or substantially all of the Company's assets; (iv) make a call for Additional Funds under Section 4.2 or require the delivery of personal guaranties under Section 4.4; (v) borrow money or incur expenses in excess of \$50,000; (vi) approve a merger or consolidation of the Company with any other entity; or (vii) admit a new Member.
- c. Except as provided in subsection (b) above or as otherwise required under this Agreement, all other decisions of the Company shall require a Majority Vote of the Members.
- d. No act of a Member shall bind the Company unless such act has been authorized by a sufficient vote of Members as set forth in this Section.

3.6. Action by Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by Members whose voting power is sufficient to authorize such action.

4. **CAPITAL CONTRIBUTIONS**

- 4.1. Initial Capital Contributions. Each Member shall make an Initial Capital Contribution to the Company in the amount set forth on Exhibit A at times and in increments amounts as directed by a Majority Vote of the Members in order to fund the Company's capital contribution obligation to Mohawk Valley EC, LLC.
- 4.2. Additional Funding Requirement. If the Members by a Supermajority Vote of the Members determine that the Company requires additional funds, such funds shall be contributed by the Members in proportion to their Sharing Ratios within 10 days following the date of the call ("Additional Funds"). At the direction of the Members such Additional Funds shall either be in the form of a loan or Capital Contribution to the Company. For purposes of this Agreement, Additional Funds called for under this Section shall be referred to as the "Additional Funding Requirement."
- 4.3. Remedies for Failure to Fund. If any Member shall fail to pay his Initial Capital Contribution or Additional Funding Requirement when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 30 days in which to cure such default. If, after 30 days, the Defaulting Member has not cured such default, then upon a Majority Vote of the Members (excluding the Defaulting Member), the Company may (a) exercise its Right of Termination under Section 6.6; (b) apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) enforce the Defaulting Member's obligation to pay his Initial Capital Contribution or Additional Funding Requirement and recover attorneys' fees and costs of collection in addition to interest at 15% per

annum accruing from the date the Capital Contribution or Additional Funding Requirement was first required to have been paid.

4.4. Personal Guaranties.

- a. Each Member shall execute and deliver one or more guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center (a "Member Guaranty"). If any Member shall fail to deliver his Member Guaranty within 10 days following request, the Company may (a) redeem the Membership Interest of the Defaulting Member for \$1.00 and seek damages against the Defaulting Member or (b) enforce the Member's obligation to deliver his Member Guaranty and recover attorneys' fees.
- b. In the event one or more Members who have delivered a Member Guaranty pays in excess of his share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection. A Member who is not required to deliver a personal guaranty shall not be considered a Nonpaying Member hereunder.

4.5. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.

4.6. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.

4.7. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

- 4.8. Assignment of Membership Interests in Mohawk Valley EC, LLC to the Company. The Members own, in the aggregate, 100% of the membership interest in Mohawk Valley EC, LLC (the "MVEC Membership Interests"). The Members hereby assign to the Company, effective on the date hereof, all of their right, title and interest in and to the MVEC Membership Interests and the Company hereby accepts such assignment.

5. ALLOCATIONS AND DISTRIBUTIONS

- 5.1. Allocation of Net Profits and Net Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.
- 5.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.3. Distributions. Net available cash flow of the Company shall be distributed to the Members at such times and in such amounts as the Members shall determine.
- 5.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 5.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 5.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 5.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 5.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.

- 5.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.
- 5.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.
- 5.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 5.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 5.14. Records, Audits, and Reports. The Company shall maintain records and accounts of all operations and expenditures of the Company.
- 5.15. Returns and Other Elections. The Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Members.

6. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 6.1. Restriction Against Withdrawal. Except as otherwise provided in this Agreement, no Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 6.2. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by a Supermajority Vote of the Members; (b) the proposed transferee satisfies all membership criteria; and (c) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation,

reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:

- a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**
 - b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
 - c. The transferee shall have adopted and approved in writing this Agreement.
 - d. Except for the right to receive allocations of Net Profits and Net Losses and to receive distributions, a transferee of a Membership Interest shall not have a right to become a Member unless approved by a Supermajority Vote of the Members.
- 6.3. Transferee Not a Member. Notwithstanding anything to the contrary contained in this Agreement, no Person acquiring all or a portion of a Membership Interest shall become a Member unless such person is approved by a Supermajority Vote of the Members.
- 6.4. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.
- 6.5. Termination of Membership: Involuntary Withdrawal. The Company shall have the right, which may be exercised at the Company's sole discretion, to terminate the membership of a Member under the circumstances described below (the "Right of Termination"). A termination of a Member's membership under this Section shall be considered an involuntary withdrawal from the Company by such Member. If the Company elects to exercise its Right of Termination, the Company shall provide written notice of such election to the affected Member (the "Terminated Member"), which notice shall set forth the date on which the membership has terminated or will terminate (the "Termination Date"). Effective on the Termination Date, without any further action required by the Terminated Member or the Company (a) the Terminated Member shall cease being a Member of the Company and shall have no further rights under this Agreement except the right to receive a Withdrawal Payment as provided in Section 6.5 hereof and (b) the Terminated Member's Membership Interest, and all rights therein, shall automatically transfer to the Company. A Majority Vote of the Members shall be required to cause the Company to exercise its Right of Termination under this Section.
- a. Right to Terminate if Member Ceases to be a DDM Partner or Employee. If a Member ceases to be a partner or employee of DDM the Company shall have a continuing right to exercise its Right of Termination with respect to such Member. The Termination Date shall be the date

the Member's partnership or employment with DDM terminated or the date he ceased to be a DDM partner or employee, unless a later date is set by the Company. If a Member elects to voluntarily withdraw as a partner of DDM, the Company may exercise its Right of Termination at any time on or after the date on which such Member first notified DDM of his intent to withdraw.

- b. Right to Terminate on Other Events. The Company shall have a continuing right to exercise its Right of Termination with respect to any Member who (i) has been adjudicated a bankrupt, voluntary or involuntary; (ii) has made an assignment for the benefit of creditors; (iii) has applied for a judicial dissolution of the Company under the Act; (iv) is ineligible to own an interest in an Article 28 ambulatory surgery facility; or (v) defaults under this Agreement, which default is not cured within 30 days following written notice.
- 6.6. Withdrawal Payment to Terminated Member. A Member whose membership has been terminated under Section 6.4 shall be entitled to receive a Withdrawal Payment which represents payment for the Member's Membership Interest. The Withdrawal Payment shall be paid within 90 days following the Termination Date (the "Payment Date"). The Withdrawal Payment shall be calculated pursuant to Section 6.7 and paid pursuant to Section 6.8.
- 6.7. Amount of Withdrawal Payment. The Withdrawal Payment shall be determined by multiplying the Company's Adjusted Book Value by the Terminated Member's Sharing Ratio. As used herein, "Adjusted Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Termination Date. Adjusted Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:
- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
 - b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
 - c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
 - d. The Company shall include as an asset 95% of the value of its accounts receivable calculated by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period;
 - e. If the Terminated Member had been a Member of the Company for at least four years following the date the Center began commercial operations, the Company shall also include as an asset a goodwill component (the "Goodwill Component") in an amount equal to one times (1x) the average of the Company's annual net operating income (in accordance with

generally accepted accounting principles), excluding extraordinary gains and losses, calculated before deduction of interest, taxes, depreciation and amortization for the most recent two fully completed prior calendar years; and

- f. If the Company has exercised its Termination Right for any of the reasons set forth in Section 6.4(b)(iii), (iv) or (v), the Withdrawal Payment (i) shall not include the Goodwill Component and (ii) shall be reduced by 30%.

6.8. Payment of Withdrawal Payment. The Company shall pay (a) 20% of the Withdrawal Payment by business check on the Payment Date and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the first payment is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 60 equal consecutive monthly installments of principal and interest commencing 90 days following the Payment Date. The promissory note shall be unsecured and shall provide that in case of default all principal and accrued interest shall become immediately due and payable at the holder's election. The Company shall have the right to set off any amounts owing by the Terminated Member to the Company against the Withdrawal Payment. Notwithstanding the terms of the promissory note, the Company, by a Supermajority Vote of the Members, may defer all or a part of the payments due thereunder if such payments, combined with Withdrawal Payments owing by the Company to other Terminated Members, exceed 25% of the Company's net cash flow available for distribution on an annual basis. All deferred payments shall accrue interest at 10% per annum and shall be paid in full not later than two years following the original maturity date of the promissory note.

6.9. Release of Personal Guaranties. If the Terminated Member signed any personal guaranty on behalf of the Company, the Company shall use its best efforts to obtain a release of such guaranty(ies). If the Company is unable to obtain a release, the Company and the remaining Members shall indemnify the Terminated Member against any liability arising out of such guaranty.

7. DISSOLUTION AND TERMINATION

7.1. Dissolution of the Company. The Company may be dissolved by a Supermajority Vote of the Members.

7.2. Procedure on Liquidation. Upon the dissolution of the Company, the Members shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 7.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.

7.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:

- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
- b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;
- c. Third, to Members in accordance with their positive Capital Account balances.

8. INDEMNIFICATION

8.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company may maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

8.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 8.1.

9. DISPUTE RESOLUTION

- 9.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

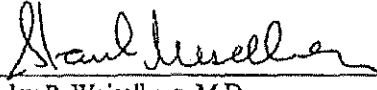
10. GENERAL PROVISIONS

- 10.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.
- 10.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.
- 10.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 10.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 10.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 10.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 10.7. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.

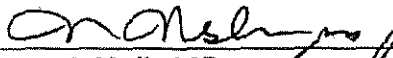
- 10.8. Waiver of Action for Partition. Each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 10.9. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.
- 10.10. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 10.11. Agreement Prepared by Attorney for Company. The parties each agree that the Company's counsel has prepared this Agreement in the course of its representation of the Company and not as counsel to any individual Member. The Company's counsel has advised the Company that interests of the Members may be adverse in certain circumstances. By its signature below, each Member confirms that he has either obtained the advice of separate counsel with respect to this Agreement or has independently evaluated the need for separate counsel and has knowingly elected not to retain same.

[Signatures on following page]


IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.




Stanley P. Weiselberg, M.D.



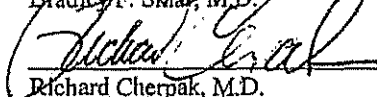
Norman R. Neslin, M.D.



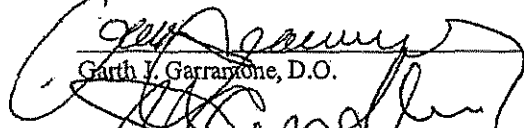
Robert R. Pavelock, M.D.



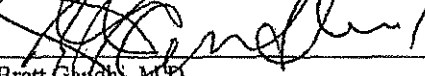
Bradley F. Sklar, M.D.



Richard Cherpak, M.D.



Garth J. Garrapone, D.O.



Brett Gaudin, M.D.

MVEC HOLDINGS, LLC

By: 

Member

EXHIBIT A

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
Stanley P. Weiselberg, M.D. [REDACTED]	[REDACTED]	100	14.2858%
Norman R. Neslin, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Robert R. Pavlock, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Bradley F. Sklar, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Richard Cherpak, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Garth J. Garramone, D.O. [REDACTED]	[REDACTED]	100	14.2857%
Brett Gandhi, M.D. [REDACTED]	[REDACTED]	100	14.2857%

ARCHITECTURAL SUBMISSION

187 East Market Street
Suite 180
Rhinebeck NY 12572

845 876 8202
845 876 8112 fax
optimusarchitecture.com



14 December 2010

NYS Department of Health/Office of Health Systems Management
Division of Health Facility Planning
Bureau of Architectural and Engineering Facility Planning
433 River Street, 6th Floor Troy, New York 12180-2299

Re: Project #: 092142B
Name: Mohawk Valley EC, LLC
Location: 116 Business Park Drive, Utica, NY 13502
Description: Construct a new endoscopy procedure facility.

Dear Mr. Thomas Jung:

This is to certify that under the terms of my contract for the above-named facility to provide services to design and prepare working drawings and specifications, and as applicable to make periodic visits to the site during construction and perform such other required services to familiarize myself with the general progress, quality and conformance of the work, I have ascertained that to the best of my knowledge, information and belief: the completed structure will be designed, and constructed, in accordance with plans and specifications consistent with the referenced CON as approved by the New York State Department of Health, and in substantial compliance with the applicable provisions of the State Hospital Code (10 NYCRR) which were in effect at the time this project was approved. I understand that upon completion of construction, the costs of any subsequent corrections necessary to achieve compliance with the requirements of Part 711 of this Title, when the prior work was not completed properly as certified herein, may not be considered allowable costs for reimbursement under Part 86 of NYCRR Title 10. I ascertain that I have read and understood the conditions of Part 710 of 10 NYCRR.

This certification is being submitted in lieu of a formal plan approval by your office. It is understood that final Construction Documents for record purposes only must still be submitted for all Full and Administrative Reviews.

12.14.2010

Date

A handwritten signature in black ink, appearing to read "David A. Souers".

David A. Souers, AIA, ACHA, ASHE
Professional NYS License No. 017367-1

12-16-2010

Date

A handwritten signature in black ink, appearing to read "Peggy Alteri".

Peggy Alteri, Interim Administrator
Mohawk Valley EC, LLC

**HOSPITAL PROGRAM MANUAL
PROCEDURE
CONSTRUCTION
START OF CONSTRUCTION - SHC710.7**

To: Thomas M. Jung-Director
Bureau of Architectural and
Engineering Facility Planning
433 River Street, Suite 303
Troy, New York 12180-2299

Re: Project No. 092142B
Facility: Mohawk Valley EC, LLC
County: Oneida County
(Description of Scope Approval)
Construct a new endoscopy procedure facility

I request approval for the start of construction on the above project.

Upon receipt of this letter containing the department's approved costs noted herein, it is understood that the applicant will be advised in writing that approval to commence construction has been granted. The signatures of the facility's Chief Executive Officer, the Project Architect and the Construction Manager will serve to verify that the project is consistent with approved scope of work and previously approved planning documents. Further, the completed project will comply with the State Hospital Code, NFPA Life Safety Code (101), local codes and other applicable codes.

I understand that the maximum cost recognized for the Capital Cost component of the reimbursement rate, regardless of any future cost over-run will be:

1.1 Land Acquisition	\$ _____
1.2 Building Acquisition	\$ _____
2.1 New Construction	\$ _____
2.2 Renovation & Demolition	\$ <u>1,852,750</u>
2.3 Site Development	\$ _____
2.4 Temporary Power	\$ _____
2.5 Asbestos Abatement or Removal	\$ _____
3.1 Design Contingency	\$ <u>173,275</u>
3.2 Construction Contingency	\$ <u>173,275</u>
4.1 Fixed Equipment (NIC)	\$ _____
4.2 Planning Consultant Fees	\$ <u>140,000</u>
4.3 Architect / Engineering Fees	\$ <u>200,000</u>
4.4 Construction Manager Fees	\$ _____
4.5 Other Fees (Consultant etc.)	\$ <u>182,000</u>
Subtotal (total 1.1 thru 4.5)	\$ <u>2,639,300</u>
5.1 Movable Equipment	\$ <u>1,500,000</u>
6.0 Total Basic Cost of Construction (Total 1.1 thru 5.1)	\$ <u>3,999,300</u>
7.1 Financing Costs (Points, etc.)	\$ _____
7.2 Interim Interest Expense	\$ _____
8.0 Total Project Costs	\$ _____
9.1 Application Fee	\$ <u>2,000</u>
9.2 Additional Processing Fee	\$ <u>21,446</u>
10 Total Project Cost with CON fees	\$ <u>4,022,746</u>

Construction will start on _____ for a period of _____ months and be completed on _____

PRINT & SIGN:

[Signature]
(Applicant)
[Signature]
(Architect/Engineer)
[Signature]
(Construction Manager)

DATE: 12/24/2010

DATE: 12/20/2010

DATE: 12/21/2010

187 East Market Street
Suite 180
Rhinebeck NY 12572

845 876 8202
845 876 8112 fax
optimusarchitecture.com



14 December, 2010

Mr. Jeffrey Rothman, M.S., M.B.A.
Project Management Group
Division of Health Facility Planning
Office of Health Systems Management
New York State Department of Health
433 River Street, 6th Floor
Troy, New York 12180-2299

Re: Project #: 092142B
Name: Mohawk Valley EC, LLC
Location: 116 Business Park Drive, Utica, NY 13502
Description: Construct a new endoscopy procedure facility.

Dear Mr. Jeffrey Rothman;

The attached page itemizes our responses to the contingencies/conditions of approval for the above referenced project. Please utilize it to satisfy the requirements of the Department of Health and feel free to contact us should we be of further assistance.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "David A. Souers", with a stylized flourish at the end.

David A. Souers, AIA, ACHA, ASHE
Professional NYS License No. 017367-1

	CONTINGENCY	RESPONSE
7.	Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities.	Signage will be provided in a building directory and at the entrance to Mohawk Valley EC. This will clearly denote that the center is separate and distinct from other adjacent entities.
8.	Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space.	Entrance to Mohawk Valley EC is directly from the building lobby, and does not disrupt nor impact any other tenant or program in the building. A plan describing entry was provided with CON application.

	CONDITIONS	RESPONSE
1.	The submission of State Hospital Code Drawings for review and approval, as described in BARFP Drawing Submission Guidelines DSG-01	A CD disk of completed construction drawings is herewith provided.
2.	The submission of Final Documents, as described in BARFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction.	A CD disk of completed construction drawings is herewith provided with a request to start construction.
3.	The applicant shall complete construction by August 1, 2011. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10 (a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner.	Construction is expected to start immediately with DOH permission to start construction, and will be completed by August 1, 2011 pending DOH's permission to start construction by January 1, 2011.



WOOD & SMITH P.C.
ATTORNEYS AT LAW

ONE LINCOLN CENTER, SUITE 1110
110 WEST FAYETTE STREET
SYRACUSE, NEW YORK 13202
(315) 423-0400 • FAX (315) 424-1011

December 17, 2010

Suzanne A. Sullivan, Esq.
Senior Attorney, Bureau of House Counsel
New York State Department of Health
ESP Corning Tower, 24th Floor
Albany, New York 12237-0029

RECEIVED

DEC 20 2010

NYS DEPARTMENT OF HEALTH
DIVISION OF LEGAL AFFAIRS
BUREAU OF HOUSE COUNSEL

Re: CON Application No.: 092142B Mohawk Valley, EC

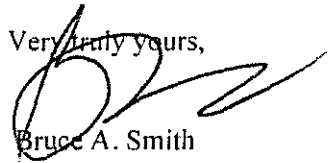
Dear Ms. Sullivan:

This letter responds to the November 12, 2010 from you to Ann Gormley, a copy of which is attached. Enclosed please find the following documents, the first two of which have been revised to address the items identified in your letter to Ms. Gormley:

1. Fully executed proposed Amended and Restated Articles of Organization of Mohawk Valley EC, LLC;
2. Fully executed proposed Amended and Restated Operating Agreement of Mohawk Valley EC, LLC;
3. Filed Articles of Organization of MVEC Holdings, LLC;
4. Fully executed Operating Agreement of MVEC Holdings, LLC.

Please call if you have any questions.

Very truly yours,


Bruce A. Smith

cc: Ann Gormley



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

November 12, 2010

Ms. Ann Gormley
Consultant
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Re: CON Application No.: 092142 B Mohawk Valley EC, LLC

Dear Ms. Gormley:

This letter requests additional information and documentation relating to the above referenced CON application.

1. Please submit a photocopy of a fully executed proposed amended and restated articles of organization of the applicant with the following changes the one that was recently submitted.
2. Delete the following statement which appears in paragraph 4 on pages 1 and 2: "Each class of member shall have such relative rights, powers, preferences and limitations as the Company's operating agreement may provide. The Company may establish additional classes of members with such relative rights, designations, qualifications preferences and duties as shall be set forth from time to time in the Company's operating agreement." Please add to paragraph 4, a statement describing the voting rights and powers each class of members.
3. Please submit a photocopy of a fully executed proposed amended and restated operating agreement of the applicant with the following changes the one that was recently submitted.
4. Please delete all references to economic interests. Each membership interest must include economic and voting rights.

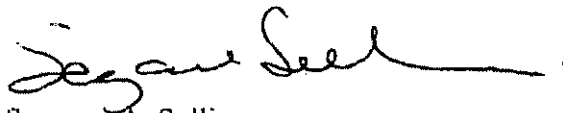
- 2 -

5. Add to paragraph 4.2 the following: " g. decisions necessary to perform the responsibilities the governing body as set forth in Public Health Law Article 28, and 10 NYCRR sec. 405.1."
6. Please submit a photocopy of a fully executed proposed amended and restated articles of organization of MVEC Holdings, LLC. I have enclosed a copy of Department guidelines regarding second level ownership for your convenience. These guidelines apply to MVEC Holdings, LLC.
7. Please submit a photocopy of a fully executed proposed amended and restated articles of organization of the application with the following changes the one that was recently submitted.
8. Please delete all references to economic interests. Each membership interest must include economic and voting rights.

I have enclosed a copy of Department guidelines regarding second level ownership for your convenience. These guidelines apply to MVEC Holdings, LLC.

Please send the documentation to me at: New York State Department of Health, ESP Corning Tower, 24th floor, Albany, New York 12237-0029. If you have any questions regarding this letter, please feel free to contact me at (518) 473-1403.

Sincerely,



Suzanne A. Sullivan
Senior Attorney
Bureau of House Counsel

Enclosure

Item 1

**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 214 of the Limited Liability Company Law

1. The name of the limited liability company (the "Company") is Mohawk Valley EC, LLC.
2. The date of the filing of the Articles of Organization is October 15, 2009.
3. The amendments effected by this Amended and Restated Articles of Organization are as follows:
 - a. To specify the address of the principal office of the Company;
 - b. To subject any change in the management structure of the Company to the prior approval of the New York State Department of Health;
 - c. To limit the powers and purposes of the Company to the ownership and operation of a single specialty ambulatory surgery center providing endoscopy services licensed pursuant to New York Public Health Law Article 28; and
 - d. To subject changes to membership interests and voting rights in the Company to the provisions set forth in New York Public Health Law Section 2801-a(4)(b).
4. To accomplish amendment 3(a), as stated above, Article 2 of the Articles of Organization is hereby amended to read as follows :

"2. The principal office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502."
5. To accomplish amendment 3(b), as stated above, Article 4 of the Articles of Organization of the Company is hereby amended to read as follows:

"4. The Company shall be managed by its Members. Neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the approval of the New York Department of Health."
6. To accomplish amendment 3(c), as stated above, a new Article 5 of the Articles of Organization is hereby added to read as follows:

"5. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center exclusively providing gastroenterology services licensed under Article 28 of the Public Health Law known as "Mohawk Valley Endoscopy Center" located at 116 Business Park Drive, Utica, New York 13502."
7. To accomplish amendment 3(d), as stated above, a new Article 6 of the Articles of Organization is hereby added to read as follows:

"6. Notwithstanding anything in the articles of organization or operating agreement to the contrary, any transfer, assignment or other disposition of any membership interest

or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.”

8. The Articles of Organization are hereby restated to set forth its entire text as amended:

**ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 203 of the Limited Liability Company Law

1. The name of the limited liability company (the “Company”) is: Mohawk Valley EC, LLC.
2. The principal office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502.
3. The Secretary of State is designated as agent of the Company 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 Company served upon the Secretary is:

c/o the Company
110 Business Park Drive
Utica, New York 13502

4. The Company shall be managed by its Members. Neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the approval of the New York Department of Health.
5. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center exclusively providing gastroenterology services licensed under Article 28 of the Public Health Law known as “Mohawk Valley Endoscopy Center” located at 116 Business Park Drive, Utica, New York 13502.
6. Notwithstanding anything in the Articles of Organization or Operating Agreement to the contrary, any transfer, assignment or other disposition of any membership interest or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.

IN WITNESS WHEREOF, these Amended and Restated Articles of Organization have been subscribed this 17th day of October, 2010.

MVEC HOLDINGS, LLC,
Managing Member of Mohawk Valley EC, LLC

By: 
Bradley Sklar, M.D., Member

Item 2

**MOHAWK VALLEY EC, LLC
AMENDED AND RESTATED OPERATING AGREEMENT**

THIS OPERATING AGREEMENT is entered into as of October 15, 2010 to be effective on the Effective Date, by and among MVEC HOLDINGS, LLC ("Holdings"), FAXTON ST. LUKE'S HEALTHCARE ("FSLH") and ST. ELIZABETH MEDICAL CENTER ("SEMC") and MOHAWK VALLEY EC, LLC (the "Company").

RECITALS:

A. The Company's original members have entered into an Operating Agreement dated as of November 10, 2009 (the "Original Operating Agreement").

B. In connection with the admission of the Hospital Members, the restructuring of the physician ownership component of the Company and the receipt of PHC Approval, the Members and the Company wish to amend and restate the Original Operating Agreement as set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Company Law, as the same may be amended from time to time.
- 1.2. "Affiliate" shall mean, when used with reference to a specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person, (b) any Person that is an officer, partner or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of the specified Person and (d) any relative or spouse of the specified Person.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 6.6 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the four operating room, single-specialty ambulatory surgery center specializing in gastroenterology to be located at 116 Business Park Drive, Utica, New York 13502.

- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean Mohawk Valley EC, LLC, a New York limited liability company and its successors.
- 1.10. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP or its successors.
- 1.11. "PHC Approval" shall mean final approval by the Public Health Council of the Health Department of the establishment of the Company.
- 1.12. "Effective Date" shall mean the date on which the Company has received the PHC Approval and has filed its Amended and Restated Articles of Organization with the Secretary of State in the form approved by the Health Department.
- 1.13. "Health Department" shall mean the New York State Department of Health.
- 1.14. "Hospital Member(s)" shall mean FSLH and/or SEMC.
- 1.15. "Managing Member" shall mean Holdings.
- 1.16. "Member(s)" shall mean Holdings and the Hospital Members.
- 1.17. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and the right, if any, to vote or participate in management of the Company.
- 1.18. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined on a cash basis at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.19. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.20. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.21. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.
- 1.22. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.

- 1.23. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.24. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.25. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.26. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or a part of a Member's Membership Interest.
- 1.27. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.28. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 10.1 hereof.
- 2.2. Name. The name of the Company shall be "Mohawk Valley EC, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed for the sole purpose of constructing, owning and operating a four operating room, single-specialty ambulatory surgery center exclusively providing gastroenterology services located in Oneida County at 116 Business Park Drive, Utica, New York.
- 2.4. Effective Date of Agreement. This Amended and Restated Operating Agreement shall be effective on the Effective Date.
- 2.5. Superseding Effect. This Amended and Restated Operating Agreement shall amend, restate and supersede the Original Operating Agreement in its entirety.

3. ESTABLISHMENT OF CLASSES OF MEMBERS

- 3.1. Establishment of Membership Classes. The Company shall have two classes of Members: the Managing Member and the Hospital Members. Except for management and voting rights, the relative rights, powers, preferences and obligations of the Members are identical.
- 3.2. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.

4. MANAGEMENT AND VOTING RIGHTS

- 4.1. Management of the Company. The business and affairs of the Company shall be managed by the Managing Member. Except as set forth in Section 4.2, and notwithstanding anything to the contrary contained in the Act, all decisions with respect to the Company shall be made exclusively by the Managing Member. The Managing Member shall have the duty to conduct the affairs of the Company in the best interests of the Company. The management structure or the provisions setting forth such structure may not be deleted, modified or amended without the prior approval of the Health Department.
- 4.2. Hospital Member Voting Rights. Notwithstanding anything to the contrary contained in this Agreement or in the Act, except for the voting rights identified in subsections (a) and (b) below (the "Hospital Member Voting Rights"), the Hospital Members have no voting rights and all decisions of every nature concerning the Company shall be made by the Managing Member.
- a. The following decisions shall require, in addition to the approval of the Managing Member, the approval of both Hospital Members:
- i. Amend the Center's operating certificate to (i) increase the number of operating rooms in the Center beyond four or (ii) provide services other than gastroenterology services;
 - ii. Amend the Company's Articles of Organization or this Agreement;
 - iii. Incur individual capital expenditures (excluding medical equipment) in excess of \$100,000 or total capital expenditures, including medical equipment, in excess of \$250,000 per year following completion of the construction and equipping of the Center;
 - iv. Make a call for mandatory additional capital contributions;
 - v. Issue additional Units of Membership Interest; and
 - vi. Except as provided in Section 9.4, admit a Person as a Member and issue such Person Units of Membership Interest.
- b. Except for those decisions identified in subsection (a) above which require the affirmative approval of both Hospital Members in addition to the approval of the Managing Member, the

affirmative vote of Members owning a majority of outstanding Units shall be required to approve any of the actions listed in 10 NYCRR Section 405.1(c).

- 4.3. No Authority. No act of any Member shall bind the Company unless such act has been authorized by the Managing Member.
- 4.4. No Exclusive Duty. The Managing Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Managing Member or to the income or proceeds derived therefrom. No Member shall incur any liability to the Company or to any of the other Members as a result of engaging in any other business or venture.
- 4.5. Transactions with Affiliates. The Company may enter into contracts or transactions with Affiliates of the Managing Member including, without limitation, DDM, so long as (a) the Company pays fair market consideration for items provided or services rendered and (b) any such contract or transaction is promptly disclosed to the Hospital Members. The Hospital Members acknowledge and agree that the Company is paying fair market rent under the lease between the Company and 116 Business Park Associates, LLC and fair market compensation under the Medical Director Services Agreement between the Company and DDM. The Hospital Members further acknowledge and agree that Affiliates of the Managing Member have no obligation to provide items or services at a discount or on terms more favorable than those generally provided by third parties. For purposes of Section 411(b) of the Act any contract or transaction that satisfies the requirements of subsection (a) and (b) above shall conclusively be deemed to be fair and reasonable as to the Company.
- 4.6. Limitation of Liability. The Managing Member shall have no personal liability to the Company or the Members for damages from any breach of duty in such capacity; provided, however, that the foregoing shall not eliminate liability of the Managing Member for a judgment or other final adjudication adverse to the Managing Member establishing that the Managing Member's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that the Managing Member personally gained in fact a financial profit or other advantage to which the Managing Member was not legally entitled.

5. OPERATIONAL MATTERS

- 5.1. Operations Committee. The Managing Member shall establish an Operations Committee which shall provide advice and recommendations to the Managing Member on matters including operations, personnel, budgeting, strategic planning, compliance and payer relationships. Members of the Operations Committee shall include one representative from each of the Hospital Members and three physician members of the Managing Member. The Operations Committee shall meet on at least a quarterly basis.
- 5.2. Compliance. The Operations Committee or a subcommittee of the Operations Committee shall serve as the Compliance Committee for the Center. The Compliance Committee shall designate a compliance officer and shall develop a compliance plan for the Center. At the request of any

Member, which shall not be made more frequently than annually, the Company shall engage a third party to undertake a compliance audit.

- 5.3. Government Payers. The Center shall participate with all government or government-sponsored payers.
- 5.4. Charity Care Policy. The Center shall adopt a charity care policy.
- 5.5. Certain Referrals. The Hospital Members shall not take any actions or otherwise encourage its affiliated physicians to refer patients to the Center or to any of the physician members of the Managing Member ("Affiliated Member Physicians"). The Hospital Members shall not track or otherwise measure the referrals of its affiliated physicians to the Center or to any of the Affiliated Member Physicians. Compensation, if any, paid by the Hospital Members to its affiliated physicians pursuant to employment or personal services contracts shall not be not directly or indirectly related to the volume or value of referrals to the Center or to the Affiliated Member Physicians.

6. MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS

- 6.1. Capital Contributions.
 - a. The Members shall make Capital Contributions to the Company in the amounts and at the times set forth on Exhibit A.
 - b. Credit Against Capital Contribution Obligation. All payments made by DDM or another Affiliate of the Managing Member for the benefit of the Company including fees of architects, consultants, attorneys, accountants and other advisors, filing fees, construction costs, deposits and other out-of-pocket expense paid by DDM or another Affiliate shall be credited against the Managing Member's Capital Contribution obligation and shall be deemed to be a Capital Contribution made by the Managing Member.
- 6.2. Issuance of Units. Upon payment of their respective Phase One Capital Contributions, each Member shall own the number of Units of Membership Interest set forth on Exhibit A, which Exhibit may be modified from time-to-time to reflect changes in ownership of Units or the admission of new Members. Such modifications shall not be considered amendments to this Agreement.
- 6.3. Remedies for Failure to Fund. If any Member shall fail to pay its Capital Contribution when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 10 days in which to cure such default. If, after 10 days, the Defaulting Member has not cured such default, then (a) the Managing Member may exercise its option to purchase the Defaulting Member's Membership Interest pursuant to Section 9.6; (b) the Company may apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) the Company may enforce the Defaulting Member's obligation to pay its Capital Contribution and recover attorneys' fees and costs of collection in addition to interest at 15% per annum accruing from the date the Capital Contribution was first required to have been paid.

- 6.4. No Mandatory Additional Capital Contributions. No Member shall be required to make additional Capital Contributions to the Company without the approval of all Members. If additional funds are necessary or desirable to accomplish the purposes or satisfy the obligations of the Company, the Managing Member may, among other things, offer all Members the opportunity to make loans or preferred investments in the Company with such interest rate, repayment terms and preferences as may be necessary to attract the required funds.
- 6.5. Guaranties.
- a. Each Member shall execute and deliver one or more guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center in such amounts, at such times and in such form as directed by the Managing Member (a "Member Guaranty"); provided, however, that the percentage of the obligations guaranteed by the Hospital Members may not exceed their respective Sharing Ratios (20%). If any Member shall fail to deliver its Member Guaranty within 10 days following request, the Member shall be in default and (a) the Managing Member may exercise its option to purchase under Section 9.6 or (b) the Company enforce the Member's obligation to deliver its Member Guaranty and recover attorneys' fees in connection with any enforcement action.
 - b. In the event one or more Members who have delivered a Member Guaranty pays in excess of its share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection.
- 6.6. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.
- 6.7. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.
- 6.8. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

7. ALLOCATIONS AND DISTRIBUTIONS

- 7.1. Allocation of Net Profits and Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.
- 7.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 7.3. Distributions. Net available cash flow of the Company shall be distributed to the Members pro rata to their Sharing Ratios at such times and in such amounts as the Managing Member shall determine.
- 7.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 7.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 7.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 7.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 7.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.
- 7.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit

balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.

- 7.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.
- 7.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 7.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 7.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 7.14. Returns and Other Elections. The Managing Member shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Managing Member.
- 7.15. Audited Financial Statements. The Company shall cause its financial statements to be audited annually by the Company's accounting firm.

8. BOOKS AND RECORDS

- 8.1. Books and Records. The Company shall keep and maintain at its principal office adequate books and records setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company. Any Member or its designated representative shall have the right, at any reasonable time and at its own expense to have access to and inspect and copy the contents of such books or records.
- 8.2. Reports. Within a reasonable period after the end of each quarter, each Member shall be furnished with a report containing a balance sheet as of the end of such quarter and statement of earnings. Annually, the Members will receive a balance sheet, statement of earnings, and changes in Member's equity and statement of cash flow for the year ended.
- 8.3. Tax Information. Necessary tax information shall be delivered to each Member as soon after the end of each fiscal year of the Company as is practicable, but no later than April 1.

9. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 9.1. Covenant Against Withdrawal. Except for Permitted Withdrawals, no Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 9.2. Permitted Withdrawals by Hospital Members. Upon the occurrence of any regulatory development, investigation, audit or other ruling which makes the ownership of a Membership Interest by a Hospital Member illegal under the federal anti-kickback statute, the Stark law and regulations or some other federal or state law affecting joint ventures or upon the occurrence of any regulatory development, investigation, audit or other ruling which causes the Hospital Member's ownership of its Membership Interest to jeopardize its tax-exempt status for its continued participation in the joint venture, the affected Hospital Member or Members may withdraw upon providing 90 days advance written notice to the Company. Upon such withdrawal the Managing Member shall purchase the Membership Interest of the withdrawing Hospital Member at the price and on the terms set forth in Sections 9.7 and 9.8 below.
- 9.3. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by the Managing Member and the Hospital Members and (b) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation, reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:
- a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law.
 - b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
 - c. The transferee shall have adopted and approved in writing this Agreement.
- 9.4. Permitted Transfers. Holdings shall have the unrestricted right to Transfer Units to one or more its members at such price and on such terms as Holdings may determine. Upon such Transfer and subject to the satisfaction of the requirements set forth in Section 9.3, such transferees shall automatically become a Member. Holdings acknowledges that its operating agreement requires its members to be current or former partners or employed physicians of DDM.
- 9.5. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.

9.6. Option to Purchase Membership Interest. If any Member (i) is adjudicated a bankrupt, voluntary or involuntary; (ii) makes an assignment for the benefit of creditors; (iii) applies for a judicial dissolution of the Company under the Act; (v) is no longer eligible to own an interest in an Article 28 ambulatory surgery center; or (vi) fails to timely fund its Capital Contribution obligation;; (each, a "Triggering Event"), such Member (an "Offering Member") shall be deemed to have offered to sell its entire Membership Interest to the Company (if the Offering Member is a Hospital Member it shall be deemed to have offered to sell its entire Membership Interest to the other Hospital Member) on the following terms:

- a. The option to purchase shall be exercised not later than 180 days following notice of any such Triggering Event.
- b. The purchase price shall be established pursuant to Section 9.7 and paid in the manner provided in Section 9.8.

9.7. Calculation of Purchase Price. The purchase price for a Member's Membership Interest purchased by the Company or the Managing Member hereunder (the "Purchase Price") shall be determined by multiplying the Company's Book Value by the selling Member's Sharing Ratio; provided, however, that if the purchase is being made under Section 9.6 the Purchase Price shall be reduced by 30%. As used herein, "Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Triggering Event. Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:

- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code § 179) will be restated by using straight-line depreciation over their original useful life;
- b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
- c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
- d. The Company shall include as an asset 100% of the value of its accounts receivable valued by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period; and
- e. There is no goodwill in the Company, and no value shall be claimed for or attributed to it in determining the Purchase Price.

- 9.8. Payment of Purchase Price. The Purchase Price shall be paid as follows: (a) 20% in certified funds at closing and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the cash portion of the Purchase Price is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 36 equal consecutive monthly installments of principal and interest commencing 30 days following the closing date. The promissory note shall be unsecured and shall provide that in case of default all principal and accrued interest shall become immediately due and payable at the holder's election. If the Company is the purchaser it shall have the right to set-off any amounts owing by the Member to the Company against the Purchase Price.
- 9.9. Closing. The closing of the purchase of a Membership Interest hereunder shall take place at the principal office of the Company. At closing the purchaser shall deliver the Purchase Price and the selling Member shall execute and deliver assignments legally sufficient to transfer the Membership Interest free and clear of all taxes, debts, claims, liens or encumbrances. The closing shall occur on the date designated by the Company.
- 9.10. Power of Attorney. Each Member appoints the Company as its agent and attorney-in-fact to execute and deliver all documents needed to convey its Membership Interest, if such selling Member is not present at the closing. This power of attorney is coupled with an interest.

10. DISSOLUTION AND TERMINATION

- 10.1. Dissolution of the Company. The Company may be dissolved by the Managing Member.
- 10.2. Procedure on Liquidation. Upon the dissolution of the Company, the Managing Member shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 10.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.
- 10.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:
- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
 - b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;

- c. Third, to Members in accordance with their positive Capital Account balances.

11. INDEMNIFICATION

11.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Managing Member or a Hospital Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Managing Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company shall maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

11.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 11.1.

12. DISPUTE RESOLUTION

12.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

13. GENERAL PROVISIONS

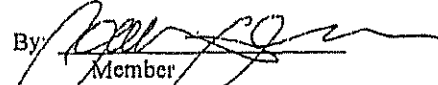
- 13.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.
- 13.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.
- 13.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 13.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 13.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 13.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 13.7. Governing Law. This Agreement shall be governed by and construed in accordance, with the laws of the State of New York, with venue of any suit, action, or legal proceeding arising under, or relating to this Agreement being in a court of competent jurisdiction located in Oneida County, New York.
- 13.8. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.
- 13.9. Waiver of Action for Partition. In addition to being subject to Section 607 of the Act, each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 13.10. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.

- 13.11. Contract Modifications for Prospective Legal Events. In the event any state or Federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party hereto in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, the Members shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements among the Members.
- 13.12. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 13.13. Classification as Partnership. The Company intends to be classified as a partnership for Federal income tax purposes only. The Members agree to take such actions, make such elections and, if required, amend this Operating Agreement to assure that such classification is maintained.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: 
Member

FAXTON ST. LUKE'S HEALTHCARE

By: _____

Title: _____

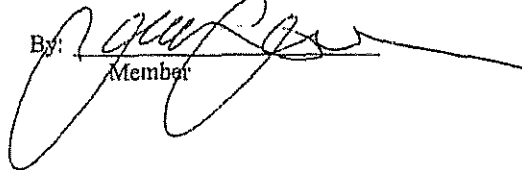
ST. ELIZABETH MEDICAL CENTER

By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: 
Member

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: _____
Member

FAXTON ST. LUKE'S HEALTHCARE

By: *Scott H. Perra*
Title: Scott H. Perra, FACHE
President/CEO

ST. ELIZABETH MEDICAL CENTER

By: _____
Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: _____
Member

FAXTON ST. LUKE'S HEALTHCARE

By: _____

Title: _____

ST. ELIZABETH MEDICAL CENTER

By: Subeik Kerkhan

Title: President CEO

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

EXHIBIT A

<u>Member</u>	<u>Maximum Capital Contrib. Obligation</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
MVEC Holdings, LLC	\$660,000	60	60%
Faxton St. Luke's Healthcare	\$220,000	20	20%
St. Elizabeth Medical Center	<u>\$220,000</u>	<u>20</u>	<u>20%</u>
	\$1,100,000	100	100%

The Members shall make the following Capital Contributions within 10 days following the Effective Date of this Agreement:

MVEC Holdings, LLC:	\$600,000
Faxton St. Luke's Healthcare:	\$200,000
St. Elizabeth Medical Center:	\$200,000

If required in connection with the construction of the Center, the Members shall pay the balance of their maximum Capital Contribution obligation within 10 days following request by the Managing Member.

Item 3

100929000 579

ARTICLES OF ORGANIZATION
OF
MYEC HOLDINGS, LLC


Under Section 203 of the Limited Liability Company Law

- 1. The name of the limited liability company is: MYEC Holdings, LLC
- 2. The office of the limited liability company is to be located in the County of Ononda, State of New York.
- 3. The Secretary of State is designated as agent of the limited liability company 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 limited liability company served upon the Secretary is:

a/o the Company
110 Business Park Drive
Utica, New York 13502

- 4. The limited liability company shall be managed by its members.
- 5. All members of the limited liability company shall be natural persons and this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.
- 6. Transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-(4)(b) of the Public Health Law and this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

IN WITNESS WHEREOF, these Articles of Organization have been subscribed to this 28th day of September 2010 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.



 Bruce A. Smith, Organizer
 Wood & Smith, P.C.
 One Lincoln Center, Suite 1110
 110 West Fayette Street
 Syracuse, New York 13202

Item 4

OPERATING AGREEMENT
OF
MVEC HOLDINGS, LLC

THIS OPERATING AGREEMENT is entered into on October 6, 2010 by and among STANLEY P. WEISELBERG, M.D., NORMAN R. NESLIN, M.D., ROBERT R. PAVELOCK, M.D., BRADLEY F. SKLAR, M.D., RICHARD CHERPAK, M.D., GARTH J. GARRAMONE, D.O., BRETT GANDHI, M.D. and MVEC HOLDINGS, LLC (the "Company").

In consideration of the mutual promises contained herein the parties hereby agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Companies Law, as the same may be amended from time to time.
- 1.2. "Additional Funding Requirement" shall mean additional funds called pursuant to Section 4.2 hereof.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 4.5 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the single-specialty ambulatory surgery center specializing in gastroenterology located at 116 Business Park Drive, Utica, New York 13502 owned and operated by Mohawk Valley EC, LLC.
- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean MVEC Holdings, LLC, a New York limited liability company and its successors.
- 1.10. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP or its successors.
- 1.11. "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.

- 1.12. "Initial Capital Contributions" shall mean the Capital Contributions to be made by the Members as provided in Section 4.1.
- 1.13. "Majority Vote of the Members" shall mean the affirmative vote of a majority of all Members.
- 1.14. "Member" shall mean Stanley P. Weiselberg, M.D., Norman R. Neslin, M.D., Robert R. Pavelock, M.D., Bradley F. Sklar, M.D., Richard Cherpak, M.D., Garth J. Garramone, D.O., Brett Gandhi, M.D. and such other Persons who are admitted to the Company as additional or substitute Members.
- 1.15. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and any right to vote or participate in management of the Company.
- 1.16. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.17. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.18. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.19. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.
- 1.20. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.
- 1.21. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.22. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.23. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.24. "Supermajority Vote of the Members" shall mean the affirmative vote of a number of Members equal to the total number of Members minus two.

- 1.25. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or any part of a Member's Membership Interest.
- 1.26. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.27. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 7.1 hereof.
- 2.2. Name. The name of the Company shall be "MVEC Holdings, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed to (a) own a membership interest in, and to be the Managing Member of Mohawk Valley, EC, LLC and (b) carry on, conduct or transact any business or other activities which a limited liability company formed under the Act may carry on, conduct or transact.

3. MEMBERS; MANAGEMENT OF COMPANY

- 3.1. Membership Interest. The number of Units of Membership Interest owned by each Member and their respective Sharing Ratios is set forth on Exhibit A attached hereto.
- 3.2. Membership Qualifications.
- a. Members shall be natural persons. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**
 - b. Members shall be current or former partners or physician employees of DDM.
- 3.3. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.
- 3.4. Management of the Company. The business and affairs of the Company shall be managed by the Members. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**

3.5. Action by Members.

- a. For voting purposes each Member shall have one vote.
- b. The following actions shall require a Supermajority Vote of the Members: (i) adopt, amend, restate or revoke the Articles of Organization or this Agreement; (ii) approve the dissolution of the Company; (iii) approve the sale, exchange or lease of all or substantially all of the Company's assets; (iv) make a call for Additional Funds under Section 4.2 or require the delivery of personal guaranties under Section 4.4; (v) borrow money or incur expenses in excess of \$50,000; (vi) approve a merger or consolidation of the Company with any other entity; or (vii) admit a new Member.
- c. Except as provided in subsection (b) above or as otherwise required under this Agreement, all other decisions of the Company shall require a Majority Vote of the Members.
- d. No act of a Member shall bind the Company unless such act has been authorized by a sufficient vote of Members as set forth in this Section.

3.6. Action by Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by Members whose voting power is sufficient to authorize such action.

4. **CAPITAL CONTRIBUTIONS**

- 4.1. Initial Capital Contributions. Each Member shall make an Initial Capital Contribution to the Company in the amount set forth on Exhibit A at times and in increments amounts as directed by a Majority Vote of the Members in order to fund the Company's capital contribution obligation to Mohawk Valley EC, LLC.
- 4.2. Additional Funding Requirement. If the Members by a Supermajority Vote of the Members determine that the Company requires additional funds, such funds shall be contributed by the Members in proportion to their Sharing Ratios within 10 days following the date of the call ("Additional Funds"). At the direction of the Members such Additional Funds shall either be in the form of a loan or Capital Contribution to the Company. For purposes of this Agreement, Additional Funds called for under this Section shall be referred to as the "Additional Funding Requirement."
- 4.3. Remedies for Failure to Fund. If any Member shall fail to pay his Initial Capital Contribution or Additional Funding Requirement when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 30 days in which to cure such default. If, after 30 days, the Defaulting Member has not cured such default, then upon a Majority Vote of the Members (excluding the Defaulting Member), the Company may (a) exercise its Right of Termination under Section 6.6; (b) apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) enforce the Defaulting Member's obligation to pay his Initial Capital Contribution or Additional Funding Requirement and recover attorneys' fees and costs of collection in addition to interest at 15% per

annum accruing from the date the Capital Contribution or Additional Funding Requirement was first required to have been paid.

4.4. Personal Guaranties.

- a. Each Member shall execute and deliver one or more guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center (a "Member Guaranty"). If any Member shall fail to deliver his Member Guaranty within 10 days following request, the Company may (a) redeem the Membership Interest of the Defaulting Member for \$1.00 and seek damages against the Defaulting Member or (b) enforce the Member's obligation to deliver his Member Guaranty and recover attorneys' fees.
- b. In the event one or more Members who have delivered a Member Guaranty pays in excess of his share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection. A Member who is not required to deliver a personal guaranty shall not be considered a Nonpaying Member hereunder.

4.5. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.

4.6. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.

4.7. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

- 4.8. Assignment of Membership Interests in Mohawk Valley EC, LLC to the Company. The Members own, in the aggregate, 100% of the membership interest in Mohawk Valley EC, LLC (the "MVEC Membership Interests"). The Members hereby assign to the Company, effective on the date hereof, all of their right, title and interest in and to the MVEC Membership Interests and the Company hereby accepts such assignment.

5. ALLOCATIONS AND DISTRIBUTIONS

- 5.1. Allocation of Net Profits and Net Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.
- 5.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.3. Distributions. Net available cash flow of the Company shall be distributed to the Members at such times and in such amounts as the Members shall determine.
- 5.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 5.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 5.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 5.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 5.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.

- 5.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.
- 5.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.
- 5.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 5.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 5.14. Records, Audits, and Reports. The Company shall maintain records and accounts of all operations and expenditures of the Company.
- 5.15. Returns and Other Elections. The Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Members.

6. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 6.1. Restriction Against Withdrawal. Except as otherwise provided in this Agreement, no Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 6.2. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by a Supermajority Vote of the Members; (b) the proposed transferee satisfies all membership criteria; and (c) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation,

reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:

- a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**
- b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
- c. The transferee shall have adopted and approved in writing this Agreement.
- d. Except for the right to receive allocations of Net Profits and Net Losses and to receive distributions, a transferee of a Membership Interest shall not have a right to become a Member unless approved by a Supermajority Vote of the Members.

6.3. Transferee Not a Member. Notwithstanding anything to the contrary contained in this Agreement, no Person acquiring all or a portion of a Membership Interest shall become a Member unless such person is approved by a Supermajority Vote of the Members.

6.4. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.

6.5. Termination of Membership; Involuntary Withdrawal. The Company shall have the right, which may be exercised at the Company's sole discretion, to terminate the membership of a Member under the circumstances described below (the "Right of Termination"). A termination of a Member's membership under this Section shall be considered an involuntary withdrawal from the Company by such Member. If the Company elects to exercise its Right of Termination, the Company shall provide written notice of such election to the affected Member (the "Terminated Member"), which notice shall set forth the date on which the membership has terminated or will terminate (the "Termination Date"). Effective on the Termination Date, without any further action required by the Terminated Member or the Company (a) the Terminated Member shall cease being a Member of the Company and shall have no further rights under this Agreement except the right to receive a Withdrawal Payment as provided in Section 6.5 hereof and (b) the Terminated Member's Membership Interest, and all rights therein, shall automatically transfer to the Company. A Majority Vote of the Members shall be required to cause the Company to exercise its Right of Termination under this Section.

- a. Right to Terminate if Member Ceases to be a DDM Partner or Employee. If a Member ceases to be a partner or employee of DDM the Company shall have a continuing right to exercise its Right of Termination with respect to such Member. The Termination Date shall be the date

the Member's partnership or employment with DDM terminated or the date he ceased to be a DDM partner or employee, unless a later date is set by the Company. If a Member elects to voluntarily withdraw as a partner of DDM, the Company may exercise its Right of Termination at any time on or after the date on which such Member first notified DDM of his intent to withdraw.

- b. Right to Terminate on Other Events. The Company shall have a continuing right to exercise its Right of Termination with respect to any Member who (i) has been adjudicated a bankrupt, voluntary or involuntary; (ii) has made an assignment for the benefit of creditors; (iii) has applied for a judicial dissolution of the Company under the Act; (iv) is ineligible to own an interest in an Article 28 ambulatory surgery facility; or (v) defaults under this Agreement, which default is not cured within 30 days following written notice.
- 6.6. Withdrawal Payment to Terminated Member. A Member whose membership has been terminated under Section 6.4 shall be entitled to receive a Withdrawal Payment which represents payment for the Member's Membership Interest. The Withdrawal Payment shall be paid within 90 days following the Termination Date (the "Payment Date"). The Withdrawal Payment shall be calculated pursuant to Section 6.7 and paid pursuant to Section 6.8.
- 6.7. Amount of Withdrawal Payment. The Withdrawal Payment shall be determined by multiplying the Company's Adjusted Book Value by the Terminated Member's Sharing Ratio. As used herein, "Adjusted Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Termination Date. Adjusted Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:
- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
 - b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
 - c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
 - d. The Company shall include as an asset 95% of the value of its accounts receivable calculated by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period;
 - e. If the Terminated Member had been a Member of the Company for at least four years following the date the Center began commercial operations, the Company shall also include as an asset a goodwill component (the "Goodwill Component") in an amount equal to one times (1x) the average of the Company's annual net operating income (in accordance with

generally accepted accounting principles), excluding extraordinary gains and losses, calculated before deduction of interest, taxes, depreciation and amortization for the most recent two fully completed prior calendar years; and

- f. If the Company has exercised its Termination Right for any of the reasons set forth in Section 6.4(b)(iii), (iv) or (v), the Withdrawal Payment (i) shall not include the Goodwill Component and (ii) shall be reduced by 30%.

6.8. Payment of Withdrawal Payment. The Company shall pay (a) 20% of the Withdrawal Payment by business check on the Payment Date and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the first payment is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 60 equal consecutive monthly installments of principal and interest commencing 90 days following the Payment Date. The promissory note shall be unsecured and shall provide that in case of default all principal and accrued interest shall become immediately due and payable at the holder's election. The Company shall have the right to set off any amounts owing by the Terminated Member to the Company against the Withdrawal Payment. Notwithstanding the terms of the promissory note, the Company, by a Supermajority Vote of the Members, may defer all or a part of the payments due thereunder if such payments, combined with Withdrawal Payments owing by the Company to other Terminated Members, exceed 25% of the Company's net cash flow available for distribution on an annual basis. All deferred payments shall accrue interest at 10% per annum and shall be paid in full not later than two years following the original maturity date of the promissory note.

6.9. Release of Personal Guaranties. If the Terminated Member signed any personal guaranty on behalf of the Company, the Company shall use its best efforts to obtain a release of such guaranty(ies). If the Company is unable to obtain a release, the Company and the remaining Members shall indemnify the Terminated Member against any liability arising out of such guaranty.

7. DISSOLUTION AND TERMINATION

7.1. Dissolution of the Company. The Company may be dissolved by a Supermajority Vote of the Members.

7.2. Procedure on Liquidation. Upon the dissolution of the Company, the Members shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 7.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.

7.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:

- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
- b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;
- c. Third, to Members in accordance with their positive Capital Account balances.

8. INDEMNIFICATION

8.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company may maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

8.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 8.1.

9. DISPUTE RESOLUTION

- 9.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

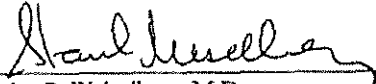
10. GENERAL PROVISIONS

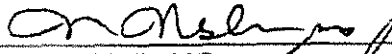
- 10.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.
- 10.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.
- 10.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 10.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 10.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 10.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 10.7. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.


- 10.8. Waiver of Action for Partition. Each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 10.9. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.
- 10.10. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 10.11. Agreement Prepared by Attorney for Company. The parties each agree that the Company's counsel has prepared this Agreement in the course of its representation of the Company and not as counsel to any individual Member. The Company's counsel has advised the Company that interests of the Members may be adverse in certain circumstances. By its signature below, each Member confirms that he has either obtained the advice of separate counsel with respect to this Agreement or has independently evaluated the need for separate counsel and has knowingly elected not to retain same.

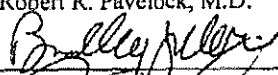
[Signatures on following page]

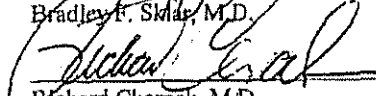
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

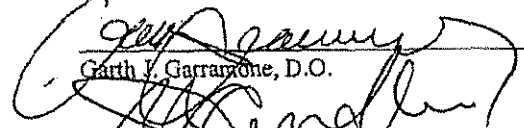

Stanley P. Weiselberg, M.D.

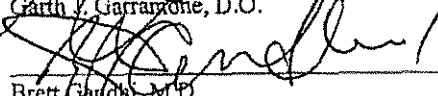

Norman R. Neslin, M.D.


Robert R. Pavelock, M.D.


Bradley F. Sklar, M.D.


Richard Cherpak, M.D.


Garth J. Garrapone, D.O.


Brett Gaudin, M.D.

MVEC HOLDINGS, LLC

By: 
Member

EXHIBIT A

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
Stanley P. Weiselberg, M.D. [REDACTED]	[REDACTED]	100	14.2858%
Norman R. Neslin, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Robert R. Pavelock, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Bradley F. Sklar, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Richard Cherpak, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Garth J. Garramone, D.O. [REDACTED]	[REDACTED]	100	14.2857%
Brett Gandhi, M.D. [REDACTED]	[REDACTED]	100	14.2857%



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

REVISED LETTER

December 15, 2010

Ann Gormley
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

~~RE-092142-B~~

Mohawk Valley EC, LLC
(Oneida County)
Establish and construct a single-specialty,
endoscopic ambulatory surgery center located
at 116 Business Park Dr., Utica; Add Faxton St.
Luke's Healthcare and St. Elizabeth Medical
Center to ownership, each with 20% interests
(\$3,922,746)

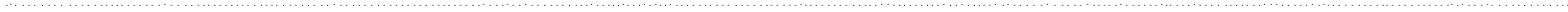
Dear Ms. Gormley:

The Public Health Council, at its meeting on ***November 19, 2010***, and the Department of Health propose to approve the above application in accordance with 10 NYCRR Parts 600 and 710. Approval of this application is subject to the enclosed contingencies first being satisfied.

In addition to contingencies, the proposed approval includes the enclosed conditions. You are expected to comply with these conditions throughout the operation of this project.

A certified check in the amount of \$ 21,446 and three (3) copies of documentation that addresses these contingencies must be sent, within sixty (60) days of receipt of this letter, to the:

Bureau of Project Management
Division of Health Facility Planning
Office of Health Systems Management
NYS Department of Health, 6th Floor
433 River Street
Troy, New York 12180-2299
(518) 402-0911



Failure to meet the 60-day deadline could result in this project being deemed abandoned as set forth in 10 NYCRR sections 600.4 and 710.10(c)(1).

Pursuant to the provisions of 10 NYCRR Parts 86 and 710, you may not begin the construction or operation of any aspect of this project, or receive reimbursement for any associated costs, unless all required written approvals are obtained. Before beginning any aspect of this project, you must complete the following steps:

- submit written materials to satisfy the enclosed contingencies and receive written approval from the Division of Health Facility Planning and the Public Health Council, indicating the satisfaction of all contingencies;
- develop a plan to ensure the health and safety of all patients and staff during construction. This plan must comply with all applicable sections of the National Fire Protection Association (NFPA) 101 Life Safety Code (1997 Edition) and all applicable sections of the State Hospital Code during construction. The plan may require you to separate residents, patients, staff and essential support services from the construction site and/or provide them with an alternative means of egress. Please have the plan available to regional office staff at the time of their on-site visit.

You are responsible for ensuring that this project complies with all applicable statutes, codes, rules and regulations. Should violations be found when reviewing documents, or at the time of on-site inspections or surveys, you will be required to correct them. Additional costs incurred to address any violations will not be eligible for reimbursement without prior approval by the Department. Also, in accordance with 10 NYCRR section 710.5, any change in the scope of this project must receive prior approval from the Department and may require a new or amended application.

This letter should not be construed as approval to file, with the Secretary of State, a certificate of incorporation, a certificate of amendment to a certificate of incorporation, a restated certificate of incorporation, an application for authority, articles of organization or any amendments thereto, or any other legal documents. A separate Public Health Council approval letter will be issued, as necessary, for the filing of documents with the Secretary of State after all contingencies are satisfied.

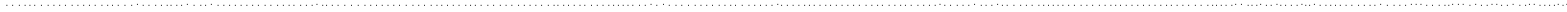
If you have any questions concerning this letter, please contact the Bureau of Project Management at (518) 402-0911.

Sincerely,



Richard M. Cook
Deputy Commissioner
Office of Health Systems Management

Enclosure





STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

December 1, 2010

Ann Gormley
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

RE: 092142-B
Mohawk Valley EC, LLC
(Oneida County)
Establish and construct a single-specialty, endoscopic
ambulatory surgery center located at
116 Business Park Dr., Utica; Add Faxton St.
Luke's Healthcare and St. Elizabeth Medical Center
to ownership, each with 20% interests
(\$3,922,746)

Dear Ms. Gormley:

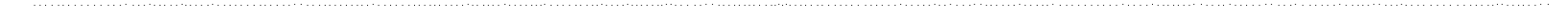
The Public Health Council, at its meeting on September 15, 2006, and the Department of Health propose to approve the above application in accordance with 10 NYCRR Parts 600 and 710. Approval of this application is subject to the enclosed contingencies first being satisfied.

In addition to contingencies, the proposed approval includes the enclosed conditions. You are expected to comply with these conditions throughout the operation of this project.

A certified check in the amount of \$ 21,446 and three (3) copies of documentation that addresses these contingencies must be sent, within sixty (60) days of receipt of this letter, to the:

Bureau of Project Management
Division of Health Facility Planning
Office of Health Systems Management
NYS Department of Health, 6th Floor
433 River Street
Troy, New York 12180-2299
(518) 402-0911

Failure to meet the 60-day deadline could result in this project being deemed abandoned as set forth in 10 NYCRR sections 600.4 and 710.10(c)(1).



Pursuant to the provisions of 10 NYCRR Parts 86 and 710, you may not begin the construction or operation of any aspect of this project, or receive reimbursement for any associated costs, unless all required written approvals are obtained. Before beginning any aspect of this project, you must complete the following steps:

- submit written materials to satisfy the enclosed contingencies and receive written approval from the Division of Health Facility Planning and the Public Health Council, indicating the satisfaction of all contingencies;
- develop a plan to ensure the health and safety of all patients and staff during construction. This plan must comply with all applicable sections of the National Fire Protection Association (NFPA) 101 Life Safety Code (1997 Edition) and all applicable sections of the State Hospital Code during construction. The plan may require you to separate residents, patients, staff and essential support services from the construction site and/or provide them with an alternative means of egress. Please have the plan available to regional office staff at the time of their on-site visit.

You are responsible for ensuring that this project complies with all applicable statutes, codes, rules and regulations. Should violations be found when reviewing documents, or at the time of on-site inspections or surveys, you will be required to correct them. Additional costs incurred to address any violations will not be eligible for reimbursement without prior approval by the Department. Also, in accordance with 10 NYCRR section 710.5, any change in the scope of this project must receive prior approval from the Department and may require a new or amended application.

This letter should not be construed as approval to file, with the Secretary of State, a certificate of incorporation, a certificate of amendment to a certificate of incorporation, a restated certificate of incorporation, an application for authority, articles of organization or any amendments thereto, or any other legal documents. A separate Public Health Council approval letter will be issued, as necessary, for the filing of documents with the Secretary of State after all contingencies are satisfied.

If you have any questions concerning this letter, please contact the Bureau of Project Management at (518) 402-0911.

Sincerely,



Richard M. Cook
Deputy Commissioner
Office of Health Systems Management

Enclosure



RESOLUTION

RESOLVED, that the Public Health Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 19th day of November, 2010, having considered any advice offered by the Regional Health Systems Agency, the State Hospital Review and Planning Council, the staff of the New York State Department of Health, and the Establishment Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty endoscopic freestanding ambulatory surgery center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

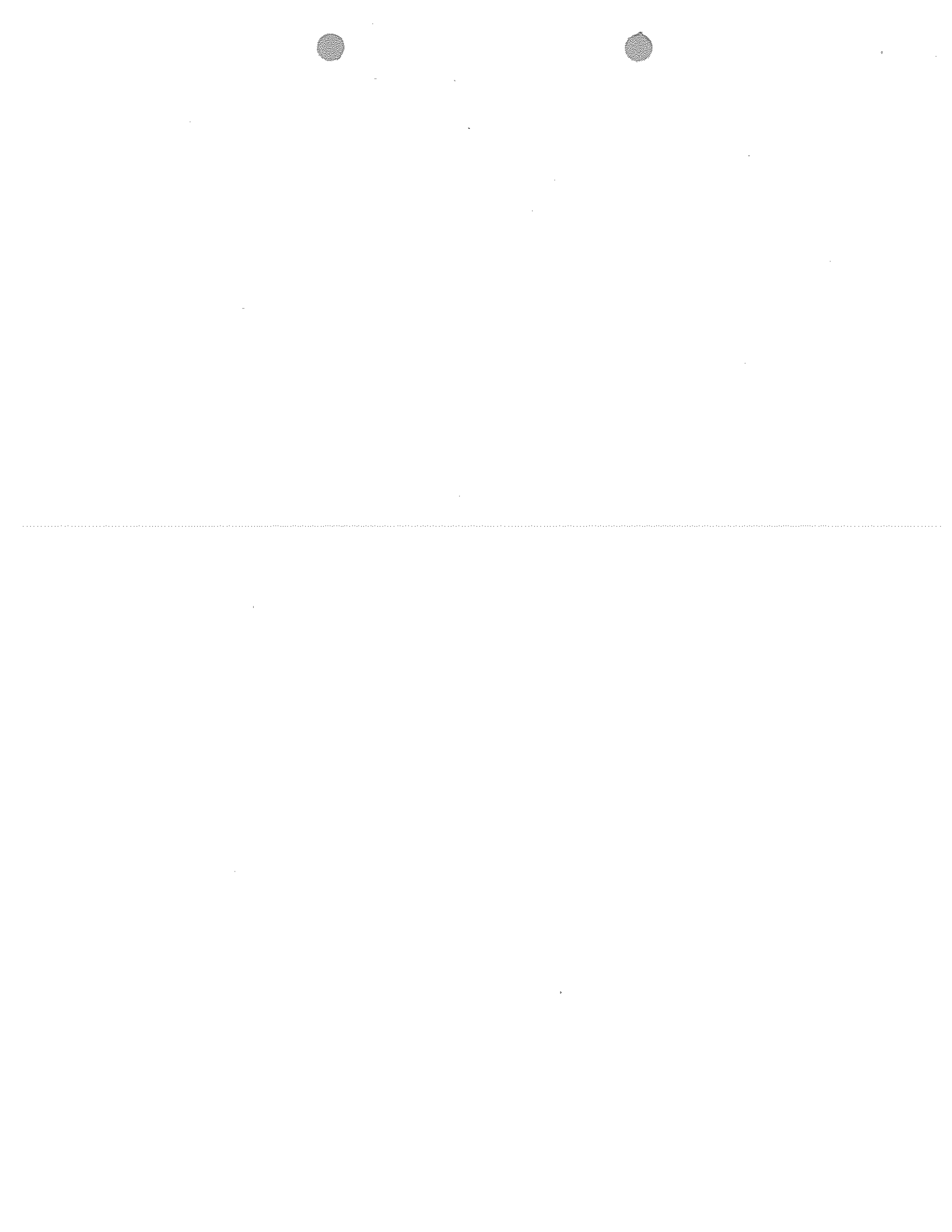
RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall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

NUMBER:

FACILITY/APPLICANT:

092142

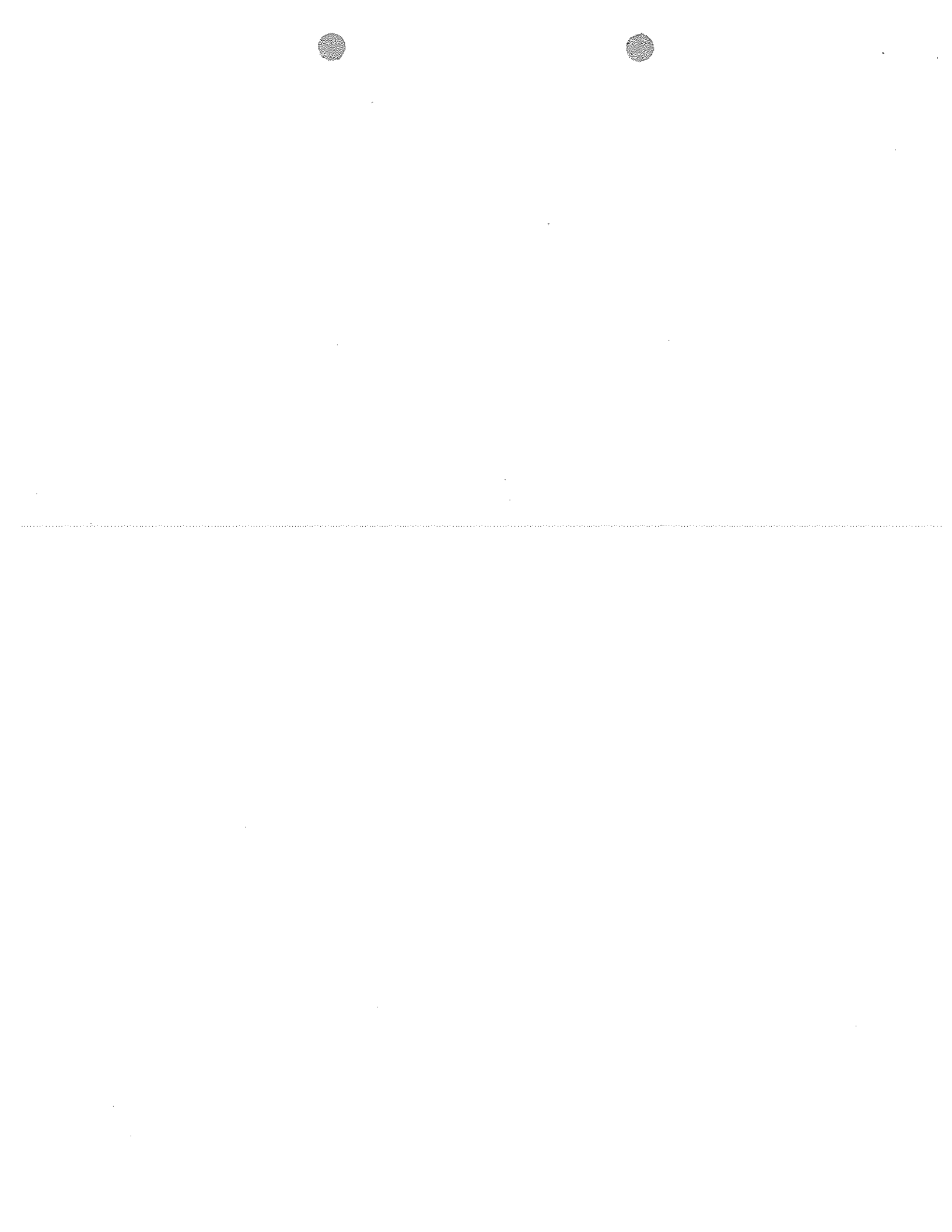
Mohawk Valley EC, LLC



APPROVAL CONTINGENT UPON:

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Section 2802.7 states that all sponsors whose applications require review by the State Hospital Review and 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 bank loan commitment for the applicant's financing acceptable to the Department. [BFA]
3. Submission of a working capital loan commitment acceptable to the Department. [BFA]
4. Submission of equipment leases acceptable to the Department. [BFA]
5. Submission of an executed transfer and affiliation agreement that is acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a staffing plan, acceptable to the Department, confirming that staff of the Center will be separate and distinct from staff of other entities. [HSP]
7. Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities. [HSP]
8. Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space. [HSP]
9. Submission of documentation, acceptable to the Department, that the clinical space will be used exclusively for this purpose. [HSP]
10. Submission of an agreement, acceptable to the Department, regarding the provision of quality oversight functions. [HSP]
11. Submission of evidence of a protocol ensuring all physicians practicing at the ASC commit, in writing, to maintain in good standing any responsibilities with all acute care hospitals where privileges have been granted. [HSP]
12. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided; and
 - Number of nosocomial infections recorded during the year in question. [RNR]
13. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]



14. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR]
15. Submission of a photocopy of the applicant's executed proposed amended and restated articles of organization, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
17. Submission of a photocopy of MVEC Holdings, LLC's executed proposed articles of organization, which is acceptable to the Department. [CSL]
18. Submission of a photocopy of MVEC Holdings, LLC's executed proposed operating agreement, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by August 1, 2011. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10 (a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

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

Mr. Jeffrey R. Rothman, M.S., M.B.A.
Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



NEW YORK STATE DEPARTMENT OF HEALTH

Division of Health Facility Planning Bureau of Architectural & Engineering Facility Planning Drawing Submission Guidelines: DSG-01

Effective immediately, the Bureau of Architectural & Engineering Facility Planning (BAEFP) is revising and clarifying its drawing review requirements (per 10 NYCRR New York State Hospital Code) as described below. These changes are intended to facilitate the timeliness of mandatory drawing submittals and review for Article 28 projects by identifying the specific components necessary for review. Rather than a full set of construction documents, this protocol seeks a "focused" submittal based on definitive Article 28 requirements. Also, it has been determined that the design development phase of review provides the best opportunity to accommodate any drawing review comments into the final project. The final working drawing submittal will now serve two primary purposes; to provide BAEFP with a record set of documents for the construction project, and to identify all significant variances in scope from the design development phase.

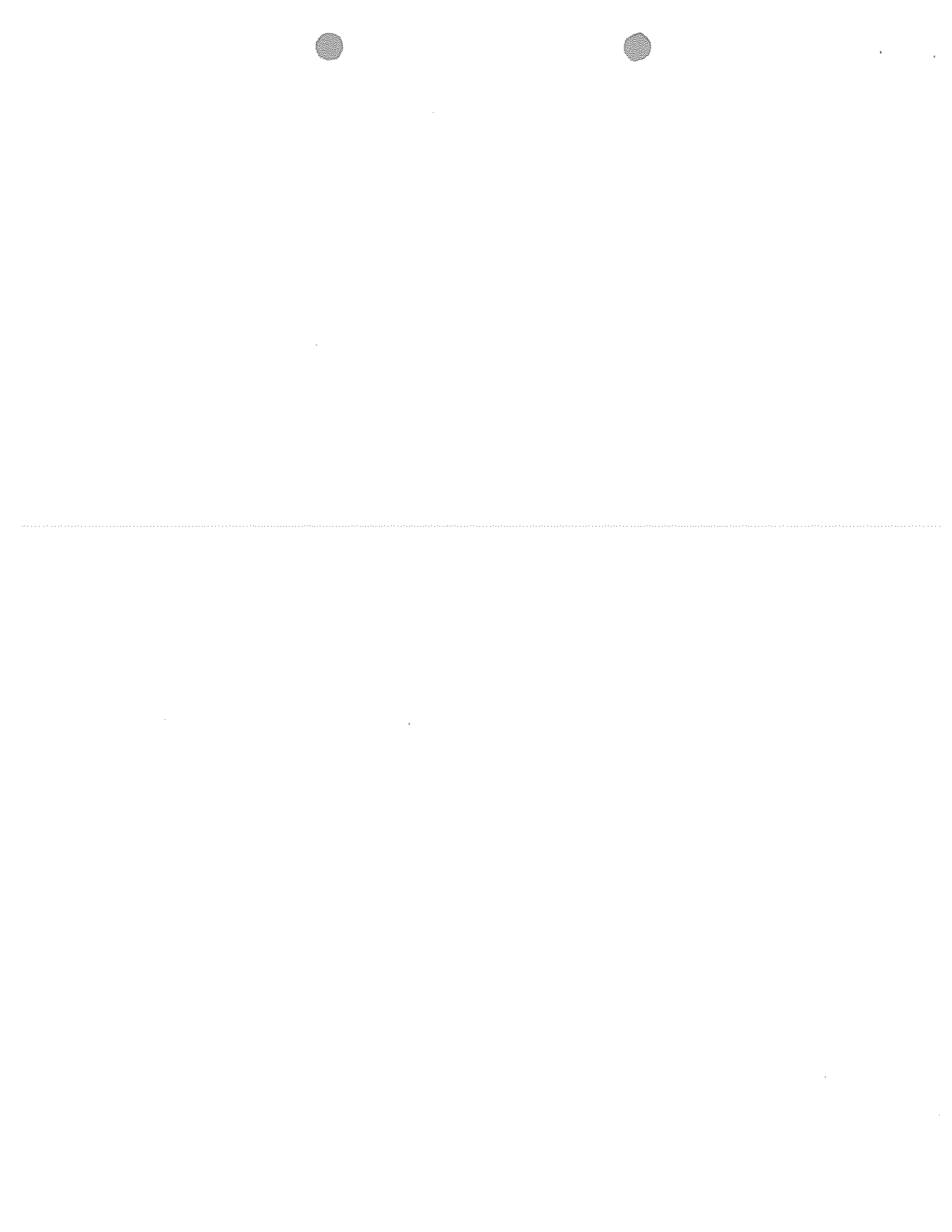
Submission Requirements for Review and Approval of Design Development Plans (10-NYCRR-710.4)

- A. The following documents must be submitted to the BAEFP for review of design development plans (estimated at 50 to 70% final working drawings) when required as a contingency for CON project approval. The format and information in these drawings shall be similar to the Construction Specifications Institute (CSI) Uniform Document Standards Code Compliance documentation. They shall include a tabulation of relevant standards and code reference requirements, and note designed compliance or deviation.
- B. The following shall represent the **entire** requirements for the Design Development Drawing submission for review, as required by 10-NYCRR-710.4. Provide one hard copy⁽¹⁾ and one electronic copy on compact disc (CD)^(2, 3, 4).
- C. A Functional Program must be included. This document will vary with project scope, but must be adequate to communicate the elements defined in 10 NYCRR 711.1(e), and should update any functional program included with the original CON application.
- D. The extent of drawings required for submission will vary depending on the scope of the project, but shall generally conform to the following:

1) SITE PLANS

a) SHC-0 ACCESS AND PARKING PLAN

- i) Provide a site plan that indicates access to the facility by people with disabilities, the availability of parking, access for emergency vehicles, and the location of adjacent roadways. A full site plan should also include structures or buildings on the site that are NOT included in the specific project, if they are functionally related and/or impact the project site.



2) FLOOR PLANS

For NEW CONSTRUCTION and RENOVATION Projects

a) SHC-1-PROGRAM FLOOR PLAN

Verification of program requirements per 10 NYCRR Chapter V Subchapter C (State Hospital Code) Article 2 (Medical Facility Construction) and the referenced edition of the AIA/HHS Guidelines for the Design and Construction of Hospitals and Health Care Facilities.

- i) The Program Floor Plan shall consist of all proposed use areas labeled and completely dimensioned. Square foot totals for each use area shall be provided. The program floor plan should include all required program functions as defined in the NYS Hospital Code specific facility Part and /or the required program functions as defined in the AIA Guidelines. The use and area information may be in tabular format, provided the room designation is clearly legible in a floor plan.
- ii) The **PROGRAM FLOOR PLAN** for **RENOVATION** and **DEMOLITION** shall also include Existing Conditions Floor Plan with all use areas labeled and dimensioned along with square foot totals per use area. All areas to be removed must be identified and disposition accounted for. This information may be in tabular format, provided the room designation is clearly legible in a floor plan.

b) SHC-2-LIFE SAFETY PLAN

Verification of compliance with the Life Safety requirements per the referenced edition of NFPA 101.

- i) The Life Safety Floor Plan shall identify all components required by the specific NFPA Chapter identified for occupancy in the 10 NYCRR Chapter V Subchapter C (State Hospital Code) Article 2 (Medical Facility Construction). The Life Safety Plan shall clearly represent adequate information to demonstrate compliance with applicable sections of the NFPA 101 Life Safety Code, including but not limited to the following:
 - (1) location of exits,
 - (2) travel distance to exits from the most remote point in the most remote room on the floor,
 - (3) direction of egress travel including doors swings,
 - (4) length of dead-end corridors,
 - (5) length of common path of travel,
 - (6) dimensioned remoteness between exits,
 - (7) location of emergency lights,
 - (8) location of exit signs,
 - (9) location of smoke detectors and fire alarm system components,
 - (10) location of sprinkler heads and standpipe system.
- ii) The Life Safety Floor Plan shall locate the floor within the context of the overall building. The building's occupancy or mixed occupancy as well as the total number of stories shall be noted. The discharge of all required exits from the floor(s) under consideration shall be shown on a ground floor plan.



c) SHC-3-SMOKE BARRIER/FIRE AREA/VENTILATION PLAN

Verification of required compartmentation/pressure relationships of smoke areas, fire separations and enclosure of exits per NFPA and pressure relationships between functional areas per AIA Table 2.

- i) The Smoke Barrier/Fire Area/Ventilation Plan shall locate required smoke barrier walls, firewalls and enclosure of exit access corridors, exit passageways and exit stairways as well as enclosure of hazardous areas. The plan shall indicate fire ratings of all walls and doors. Horizontal exits shall also be noted. The plan shall include room notes identifying pressure relationships between rooms with air changes per hour noted. The plan shall indicate the location of all required smoke/fire dampers.
- ii) Ventilation and pressure relationship information may be in tabular format, provided the room designation is clearly legible in a floor plan.

Submission Requirements for Final Construction Documents (10-NYCRR-710.7)

Final Construction Document Submission, as required by 10-NYCRR-710.7, shall include the following:

- A. An electronic copy, on CD ^(2, 3, 4), of the complete set of Construction Documents for record purposes. A hard copy is not required.
- B. An affidavit by the applicant's architect or engineer that the drawings:
 - (1) are consistent with schematic and design development drawings previously approved and, if not, the affidavit shall identify the changes and reasons for such changes; and
 - (2) are in compliance with the applicable provisions of 10 NYCRR and all applicable local codes, statutes and regulations.

NOTES:

- 1) In addition to a full-sized set, drawings may also be submitted in a reduced format, provided they are legible, in a measurable architectural scale, and include a graphic scale on each sheet.
- 2) Drawings submitted in electronic format must be submitted on CD and be readable by a readily available image viewing program. These include Portable Document Format (Adobe Acrobat), Drawing Web Format (AutoCAD), and Tagged Image File. Images should be published in original document size to maintain clarity and scalability, with a graphic scale incorporated in each image.
- 3) CD media shall be submitted in ISO9660 (Level 1, 2, or 3), Joliet, or Universal Disk Format (UDF), readable on any computer.
- 4) CD and its case must be labeled with the following:
 - a) CON number and Name of the facility,
 - b) County the facility is located within,
 - c) Brief description of the project,
 - d) Name of architectural firm and phone number,
 - e) Design Development or Final Construction Document submission.





Public Health Council

Project # 092142-B Mohawk Valley EC, LLC

County: Oneida (Utica) Program: Ambulatory Surgery Center
Purpose: Establishment and Construction Submitted: November 13, 2009

Executive Summary

Description

Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center (MVEC), a recently-formed limited liability company, requests approval to establish and construct an Article 28 D&TC, to be located in leased space at 116 Business Park Drive, Utica. MVEC will be certified as a single-specialty freestanding ambulatory surgery center (FASC) in the discipline of gastroenterology, providing endoscopy and colonoscopy services.

This project was presented at the August 5, 2010 SHRPC meeting without Faxton-St. Luke's Healthcare (FSLH) and St. Elizabeth Medical Center (SEMC) as members of the applicant. On October 15, 2010, FSLH and SEMC, both not-for-profit corporations, became members of MVEC, with each having a 20% equity interest. Also on October 15, 2010, the original seven physicians, through a newly formed entity (MVEC Holdings, LLC), became the managing members of MVEC with a 60% equity interest. The proposed members of MVEC and MVEC Holdings, LLC and their ownership percentages are as follows:

<u>Proposed Member</u>	<u>Ownership</u>
Faxton-St. Luke's Healthcare	20.0%
St. Elizabeth Medical Center	20.0%
MVEC Holdings, LLC	60.0%

<u>MVEC Holdings, LLC Members</u>	<u>Ownership</u>
Stanley P. Weiselberg, M.D.	8.57148%
Norman R. Neslin, M.D.	8.57142%
Robert R. Pavelock, M.D.	8.57142%
Bradley F. Sklar, M.D.	8.57142%
Richard Cherpak, M.D.	8.57142%
Brett Gandhi, M.D.	8.57142%
Garth J. Garramone, D.O.	8.57142%
Total	100%

Total project costs are estimated at \$3,922,746.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

All seven gastroenterologists are partners in Digestive

Disease Medicine of Central New York, LLP (DDM). They will continue to perform outpatient endoscopies at the 4 area medical facilities (SEMC; Faxton-St.Luke's Healthcare-Faxton Division; Faxton-St. Lukes Healthcare-St. Lukes Division and Oneida Healthcare Center), but will add MVEC into their current rotation. DDM reports that there is a current backlog of 5,000 to 7,000 outpatient gastroenterology procedures in their service area. In order to reduce this backlog, they plan to recruit two new physicians in the next twelve months. The proposed FASC is considered essential to the recruitment of additional physicians and for MVEC to have sufficient capacity to meet the growing demand for colorectal screenings in the service area.

Program Summary

The applicant will enter into transfer and affiliation agreements for emergency and back-up services with FSLH (1.5 miles or 5 minutes in travel time) and SEMC (1.6 miles or 5 minutes in travel time). Staff have concluded the proposed managers of the LLC are persons of good moral character whose training and experience demonstrate competency to operate an ambulatory surgery center.

Financial Summary

Project costs will be met with \$811,774 in cash, \$800,000 in equipment leases, \$500,000 from a 7-year self-amortizing equipment loan, and a 10-year term loan of \$1,810,972 using a 15-year amortization schedule (M&T Bank has provided a letter of interest for both loans at a 6% fixed rate).

Budget:	Revenues:	\$ 4,087,719
	Expenses:	2,632,144
	Gain/(Loss):	\$ 1,455,575

Subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project involves the construction of an 11,436 SF single-specialty FASC to perform endoscopies. The facility will consist of four procedure rooms, one exam room, pre-and post procedure bays, and space for support functions.

Recommendations

Health Systems Agency

The Central New York HSA has chosen not to opine on this project.

Office of Health Systems Management

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Section 2802.7 states that all sponsors whose applications require review by the State Hospital Review and 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 bank loan commitment for the applicant's financing acceptable to the Department. [BFA]
3. Submission of a working capital loan commitment acceptable to the Department. [BFA]
4. Submission of equipment leases acceptable to the Department. [BFA]
5. Submission of an executed transfer and affiliation agreement that is acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a staffing plan, acceptable to the Department, confirming that staff of the Center will be separate and distinct from staff of other entities. [HSP]
7. Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities. [HSP]
8. Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space. [HSP]
9. Submission of documentation, acceptable to the Department, that the clinical space will be used exclusively for this purpose. [HSP]
10. Submission of an agreement, acceptable to the Department, regarding the provision of quality oversight functions. [HSP]
11. Submission of evidence of a protocol ensuring all physicians practicing at the ASC commit, in writing, to maintain in good standing any responsibilities with all acute care hospitals where privileges have been granted. [HSP]
12. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided; and
 - Number of nosocomial infections recorded during the year in question. [RNR]
13. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
14. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR]
15. Submission of a photocopy of the applicant's executed proposed amended and restated articles of organization, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]

17. Submission of a photocopy of MVEC Holdings, LLC's executed proposed articles of organization, which is acceptable to the Department. [CSL]
18. Submission of a photocopy of MVEC Holdings, LLC's executed proposed operating agreement, which is acceptable to the Department. [CSL]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by August 1, 2011. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10 (a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

State Council Recommendation

November 18, 2010.

Need Analysis

Background

MVEC plans to operate an ambulatory surgery center specializing in endoscopy services. The proposed center will have four operating rooms. There are seven gastroenterologists that have committed to perform the following volume of procedures at the proposed center:

<u>Physicians</u>	<u>Annual Procedures</u>
Stanley Weiselberg	815
Norman Neslin	850
Robert Pavelock	850
Bradley Sklar	850
Richard Cherkpak	850
Brett Ghandi	850
Garth Garramone	875
Total	6,000

<u>Existing Freestanding Ambulatory Surgery Centers — Central New York</u>		
<u>Facility</u>	<u>County</u>	<u>2008 Utilization</u>
Digestive Disease Center of CNY, LLC	Onondaga	NR
Endoscopic Procedure Center	Onondaga	4,243
Harrison Center Outpatient Surgery	Onondaga	3,869
North Country Orthopedic ASC	Jefferson	1,898
Specialists' One-Day Surgery	Onondaga	9,240
Specialty Surgery Center of CNY	Onondaga	6,905
Syracuse Endoscopy Associates	Onondaga	6,133

Source: SPARCS

Analysis

MVEC reports that three of the seven gastroenterologists are over 57 years of age. They have not been able to recruit new gastroenterologists for the last seven years. They report an ambulatory surgery center is needed in order to recruit new gastroenterologists to their practice.

The Digestive Disease Management (DDM) group's seven physicians currently perform approximately 20,000 outpatient procedures per year. DDM anticipates adding two new physicians within the first year. The applicant reports that each physician added to the practice will increase the surgical volume by 2,000 to 3,000 procedures. DDM states that the area currently lacks sufficient capacity to handle the new DDM physicians and the additional surgical volume they would generate.

DDM reports that there is a 10 to 14 week wait for endoscopy procedures, with approximately 500 patients waiting each week. The physicians estimate that there is a current backlog of 5,000 to 7,000 outpatient procedures.

DDM expects significant growth in screening colonoscopies and other outpatient endoscopic procedures based on the area's aging population and an increasing focus on preventive medicine.

DDM's physician practice has not been able to meet the service needs of adjacent counties such as Lewis and Chenango because the physicians are currently overextended, serving patients from the primary three counties, Oneida, Herkimer and Madison. According to data from the Expanded Behavioral Risk Factor Surveillance System (BRESS) Report: July 2008 – June 2009 (Age Adjusted), in counties outside New York City, 66.30 percent of adults aged 50 and older reported having a sigmoidoscopy or colonoscopy within the past 10 years. The chart below shows the BRESS results for the five county areas around Utica where the proposed facility will be located.

<u>Patients Having Had Sigmoidoscopy/Colonoscopy within the Past 10 years (Age Adjusted)</u>	
<i>County</i>	<i>Percentage Age 50 or Over</i>
Oneida	66.2
Chenango	51.3
Herkimer	59.8
Lewis	45.8
Madison	69.6
New York State Outside NYC	66.3

SOURCE: Behavioral Risk Factor Surveillance System (BRESS)

DDM states that outside the two counties (Oneida and Madison) that are primarily served by DDM, the other counties are below average for colorectal screenings.

The applicant states that the proposed ambulatory surgery center with recruitment of additional gastroenterologists, will lead to significant expansion of gastroenterology services for this five county region.

<u>Population Projections for Ages 50-74 by County for 2010-2020</u>			
<i>County</i>	<i>2010</i>	<i>2020</i>	<i>Change</i>
Chenango	15,199	16,200	1,001
Herkimer	18,331	19,412	1,081
Lewis	7,242	7,920	678
Madison	19,280	21,218	1,938
Oneida	63,183	67,588	4,405
Total	123,235	132,338	9,103

SOURCE: Cornell University Program on Applied Demographics New York State and County Population Projections by Age and Sex – Preliminary Population Projections by Age and Sex, New York State and 62 counties, 2005 – 2035.

The primary population targeted for colorectal screening (ages 50 – 75) is projected to increase by 9,103 (7.4 percent) in the five county area which DDM's proposed facility will serve.

DDM estimates that to bring Chenango, Lewis and Herkimer Counties up to the Upstate New York rate of colorectal screenings, they would need to perform an additional 4,956 colorectal screenings for these three counties.

The data indicate that these three counties are currently underserved. The growth in the population aged 50-74 demonstrates that the demand for colorectal screenings will increase.

DDM reports that their physicians currently perform the following procedures at area hospitals:

<u>Hospital</u>	<u>Annual Gastroenterology Procedures</u>
Faxton-St. Luke's	7,000
St. Elizabeth's	9,000
Oneida Community Hospital	5,000
Total	21,000

DDM's plan is to maintain the current volume of procedures performed at the area hospitals and to expand their practice through the recruitment of additional gastroenterologists that will generate the additional procedures that will be performed at the ambulatory surgery center.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

This freestanding single specialty ambulatory surgery center proposes to provide surgical services in the areas of gastroenterology, utilizing four operating rooms. The Center will be in operation 7:00 a.m. to 3:30 p.m. Monday through Friday. The Center intends to extend its hours as necessary to accommodate patient needs.

The list of procedures provided reflects the proposed services are consistent with the specialties of the physicians that have expressed interest in practicing at this Center. The Center intends to review this list annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

Staffing

Staffing will consist of 19.7 FTEs including registered nurses and technicians, under the supervision of the Center's medical director, Garth Garramone. Staffing is expected to increase to 21.7 FTEs by the third year of operation. Anesthesia services will be provided by board-certified or board-eligible anesthesiologists.

Back-up Support Services and Off-hour Coverage

Emergency, in-patient and back-up support services will be provided by Faxton St. Luke's Healthcare which is 1.5 miles and five minutes in travel time from the Center and St. Elizabeth's Medical Center, which is 1.6 miles or 5 minutes in travel time from the Center. An answering service, with access to the surgeon who performed the surgery or his/her on call physician, will be provided to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform with generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements. In addition, the applicant indicates the Center intends to receive accreditation from either the Accreditation Association of Ambulatory Health Care or Joint Commission on Accreditation of Healthcare Organizations within two years after opening.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Managing Member's Responsiveness to Community Need

The Managing Members, each with 14.2857% ownership, are as follows:

Richard Cherpak, M.D.
Brett Gandhi, M.D.
Garth Garramone, DO
Norman Neslin, M.D.
Robert Pavelock, M.D.
Bradley Sklar, M.D.
Stanley Weiselberg, M.D.

Characteristics of the governing body reflect responsiveness to community need in the use of a patient satisfaction measurement tool that will provide continuous, ongoing feedback to the organization for the total quality management improvement program and planning discussions. Input from members of the medical staff and patients will provide the basis for additional services and freed or reduced fee care to eligible patients.

Character and Competence

Staff from the Division of Certification and Surveillance reviewed the disclosure information submitted by the individuals 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 and relatives' ownership interest in other health care facilities. This review revealed the following:

MVEC Holdings, LLC (60% member)

<i>Name</i>	<i>Work History/Affiliated Facility</i>
Richard Cherpak, M.D.	Physician in private practice since 1993.
Brett Gandhi, M.D.	Physician in private practice since 1994.
Garth Garramone, D.O.	Physician in private practice since 2004.
Norman Neslin, M.D.	Physician in private practice since 1987.
Robert Pavelock, M.D.	Physician in private practice since 1987.
Bradley Sklar, M.D.	Physician in private practice since 1993.
Stanley Weiselberg, M.D.	Physician in private practice since 1984.

St. Elizabeth Medical Center (20% Member)

This is the board of the St. Elizabeth's Medical Center, which is the operator of both the hospital and the affiliated Certified Home Health Agency, named St. Elizabeth Certified Home Care.

<i>Name</i>	<i>Affiliated Facility</i>	<i>Work History</i>
Richard Zweifel		CPA with Gruver, Zweifel & Scott, LLP
Catherine McDonough Cominsky	Sitrin Health Center	Adjunct Professor at Ulica College since 1998
Ramond Meier		Attorney with Bond, Schoeneck & King, PLLC since 2007
Gregory Evans		President and CEO of Indium Corporation of America since 1981 (manufacturing company)
Norman Siegel		Judge for the New York State Court of Claims since 2000.
Richard Ketcham	Mohawk Valley Heart Institute	President and CEO of St. Elizabeth Medical Center since September 2010. President and CEO of Brook Memorial Hospital from 1986 to 2009
Eric Yoss		Physician in private practice since 1988 and the Medical Director of Critical Care Services and the Medical Director of Respiratory Services at St. Elizabeth's Hospital
Harrison Hummel III		CEO and President of Hummel's Office Plus
Steven Williams, M.D.		Physician in private practice since 1998
Marianne Gaige	United Cerebral Palsy	President and CEO of Cathedral Corporation (printing company)
Fred Talarico, M.D.		Physician in private practice since 1986
Donna McGartland		Director of Ministry and Life Transitions fro Sisters of St. Francis and the Neumann Communities
Alfred Matt		President of Matt Brewing Company

Disclosures

All board members of St. Elizabeth Medical Center disclosed that: "In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976."

In addition in July of 2001, St. Elizabeth Medical Center entered into a settlement agreement with the United States in connection with an investigation into Medicare Claims submitted by St. Elizabeth Medical Center for certain clinical laboratory outpatient services from January 1989 to December 31, 1993. The case involved recommendations from a consulting firm that were relied upon by St. Elizabeth Medical Center. The allegations were settled, without admission with respect to any issue of law or fact for \$227,000. The claims for which the investigation and settlement pertained were prior to the service of any members of the existing Board of Trustees. However, the finalization of the investigation and the settlement took place during the Board service of Mr. Norman Siegel and Dr. Eric Yoss.

Faxton St. Luke's Healthcare (20% Member)

In addition to the affiliated facilities listed in the table below, all of the board members listed also serve as board members for the following entities:

- St. Luke's Home Residential Health Care Facility, Inc.
- Senior Network Health, LLC
- Mohawk Valley Home Care, LLC
- Visiting Nurse Association of Utica and Oneida County, Inc.

<i>Name</i>	<i>Affiliated Facility</i>	<i>Work History</i>
Domenic Aiello		Physician in private practice
Esther Bankert		Provost of the State University of New York Institute of Technology since 2009
Sidney Blatt		Physician in private practice since 1976
Martin Bull	- Folts Home, Inc. - Resource Center for Independent Living, Inc.	Secretary and Treasurer for Bull Bros., Inc. (petroleum distribution, convenience stores, and property management corporation)
Joan Compson	Mohawk Valley Heart Institute	Chief Financial Officer for Carbone Auto Group (auto dealership, management and realty company)
Leroy Coolay, M.D.		Physician in private practice since 1980
John Crossley		Administrator at the Utica School of Commerce since 1968
James Frederick, M.D.		Physician in private practice since 2000 and is an employee of Faxton St. Luke's Hospital
Gary Gildersleeve		Associate Executive Director for Upstate Cerebral Palsy from 2003 until his retirement in 2008
Todd Hutton		President and CEO of Utica College since 1998
Karen Leach		Vice President for Administration and Finance at Hamilton College since 2001
Christopher Max, M.D.		Physician in private practice

Gregory McLean	- The House of the Good Shepherd - Presbyterian Homes and Services	President of Caruso McLean and Company, Inc. (investment advising company)
Roger McReynolds		Vice President for Performance Improvement at Faxton St. Luke's Healthcare since 2007
Michael Paparone		President and CEO of ECR International (HVAC manufacturing company) since 2008
William Parker, M.D.		Physician employed by Faxton St. Luke's Healthcare since 2001
Scott Perra	- Hospice and Palliative Care - Mohawk Valley Heart Institute	President and CEO of St. Luke's Healthcare since 2009
James Stewart	Presbyterian Home	President and CEO of Stewart Associates, LLC (insurance brokerage and consulting company) since 1999
Stephen Sweet	Mohawk Valley Heart Institute	Owner of Sweet Products, LLC (distribution company) since 1993
Richard Tantillo		Vice President for Communications and Development at Hamilton College since 1994
Bonnie Woods		Trust Executive for Bank of America since 1991

Associated Facility Histories

The individuals above disclosed affiliations as noted, either personally or by any member of their immediate family. The 10 year surveillance history of these facilities was reviewed. Sources of information include the files, records, and reports found in the Division of Certification and Surveillance and Office of Long Term Care.

Enforcement Histories of Applicant and Associated Facilities

<u>Facility</u>	<u>Year</u>	<u>Fine</u>
Faxton St. Lukes Hospital	2003	\$20,000 for failure to adequately limit a physician's practice.
St. Elizabeth Medical Center	2005	\$4,000 for an incident related to wrong sided surgery.
St. Elizabeth Certified Home Care	2007	\$10,000 with \$5,000 of that amount suspended contingent upon maintenance of compliance for three years.
St. Luke's Home Residential Health Care Facility	2001	\$2,000 for deficiencies related to quality of care
St. Luke's Home Residential Health Care Facility	2007	\$2,000 for deficiencies related to pressure sores and nutrition.

For the enforcement actions listed above, the facilities implemented plans of correction that were monitored by Department staff following the enforcement action.

The review found that there were no cited violations that threatened or resulted in direct, significant harm to the health, safety, or welfare of patients, and that any of the relatively minor citations were promptly corrected with appropriate remedial action. Based on this information staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past ten years.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Background

The applicant has submitted an executed lease for the proposed site, the terms are summarized below:

- Date:* October 15, 2010
- Premises:* 11,436 square feet located at 116 Business Park Drive, Utica, New York
- Landlord:* 116 Business Park Associates, LLC
- Lessee:* Mohawk Valley EC, LLC
- Term:* 10 years at \$251,592 per year (\$22.00 per sq. ft)
Renewal - two 5-year terms - \$276,751 per year for the 1st 5-year term & \$304,426 per year for the 2nd 5-year term
- Provisions:* Responsible for utilities, maintenance and increases in real estate taxes and operating costs.

The seven members of MVEC Holdings, LLC, equally own the landlord, 116 Business Park Associates, LLC. The applicant has provided realtor letter's attesting to the rental rate as being of fair market value.

Total Project Cost and Financing

Total project costs for renovation and acquisition of moveable equipment are estimated at \$3,922,746, broken down as follows:

Renovation & Demolition	\$1,732,750
Design Contingency	173,275
Construction Contingency	173,275
Planning Consultant Fees	140,000
Architect/Engineering Fees	200,000
Other Fees (Consultant, etc.)	180,000
Movable Equipment	1,300,000
CON Application Fee	2,000
CON Processing Fee	<u>21,446</u>
Total Project Cost	\$3,922,746

Project costs are based on a February 1, 2011 start date with a six month construction period.

The applicant's financing plan appears as follows:

Equity Contribution	\$811,774
Equipment Leases	800,000
Bank Loan - equipment (6%, 7-year term)	500,000
Bank Loan - facility (6%, 10-year term, 15 year amortization)	<u>1,810,972</u>
Total	\$3,922,746

A letter of interest has been provided by Manufactures and Traders Trust Company (M & T Bank). The members of the applicant have provided affidavits committing to fund the balloon payment if at the end of ten years, satisfactory refinancing is not available.

Operating Budget

The applicant has submitted first and third year operating budgets, in 2010 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,377,834	\$4,087,719
Expenses:		
Operating	\$1,692,250	\$1,914,291
Capital	<u>689,729</u>	<u>717,853</u>
Total Expenses	\$2,381,979	\$2,632,144
Net Income (Loss)	<u>\$995,855</u>	<u>\$1,455,575</u>
Utilization: (procedures)	6,000	7,259
Cost Per Procedure	\$397.00	\$362.60

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

Medicaid Fee-For-Service	2.0%
Medicaid Managed Care	4.0%
Medicare Fee-For-Service	25.0%
Commercial Fee-For-Service	2.0%
Commercial Manage Care	64.9%
Private Pay	.1%
Charity	2.0%

Utilization and expense assumptions are based on comparable diagnostic and treatment centers in New York State, as well as the physicians' experience in operating a private practice. The applicant has submitted physician referral letters in support of utilization projections. A sensitivity analysis was performed, illustrating how all costs were covered in the first year at 70.6% of budgeted procedures or 4,235 procedures. By the third year, the breakeven point drops to 64.9% of the budgeted procedures.

Capability and Feasibility

The total project cost of \$3,922,746 will be funded as follows; \$811,774 from Mohawk Valley EC proposed members, \$800,000 through equipment leases, and \$2,310,972 from two loans provided by M&T Bank at stated terms.

Working capital requirements are estimated at \$438,691, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest to finance \$219,345 at an expected interest rate of 6% with a five year term. The balance of \$219,345 is being contributed by the proposed members of Mohawk Valley EC.

Presented as BFA Attachments A - C, are MVEC Holdings, LLC members' personal net worth statements, 2009 certified financial summary for Faxton-St. Luke's Healthcare, and 2009 certified financial summary for St. Elizabeth Medical Center. A review of attachments A - C indicates there are sufficient liquid resources to meet the equity and working capital requirements. Presented as BFA Attachment D, is Mohawk Valley EC pro forma balance sheet that shows operations will start off with \$1,031,119 in equity.

A review of BFA Attachment B shows Faxton-St. Luke's Healthcare and subsidiaries had an excess of revenues over expenses of \$33,057,872 in 2009 and \$4,245,577 in 2008. A major portion of 2009 income came from the sale of a wholly owned subsidiary, Faxchil Realty and its subsidiary Centrex Clinical Laboratories, Inc., to Laboratory Corporation of American Holdings. The hospital realized a \$32,469,167 gain on the transaction which helped to bring 2009's working capital to \$74,189,327 and 2009's net assets to \$134,872,138.

A review of BFA Attachment C, reveals St. Elizabeth Medical Center had an excess of revenues over expenses of \$5,740,181 in 2009 and \$1,910,563 in 2008. While the hospital had positive operating results in 2008, they had pension related charges that caused net assets to decline to \$14,247,299. During 2009, net asset increased by \$5,789,083 bringing its year end balance to \$20,036,382. At the end of 2009 working capital stood at \$21,756,371.

Mohawk Valley EC projects an operating excess of \$995,855 and \$1,455,575 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies while commercial payers are based on experience.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The applicant is proposing to build a new ambulatory surgery center (ASC) on the second floor of an existing office building. One smoke compartment will have the clinical spaces such as the four procedure rooms, prep/recovery bays, nourishment, nurse station, staff lounge and support areas. The other smoke compartment will have the non-clinical spaces such as the reception and waiting areas, offices, locker rooms, exam room, conference room and staff lounge.

Environmental Review

The Department has deemed this project to be a TYPE II Action that will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Members of MVEC Holdings, LLC
BFA Attachment B	Financial Summary for 2009, Faxton-St. Luke's Healthcare
BFA Attachment C	Financial Summary for 2009, St. Elizabeth Medical Center
BFA Attachment D	Pro Forma Balance Sheet of Mohawk Valley EC, LLC
BFA Attachment E	Establishment Checklist for Ambulatory Care Sites
BHFP Attachment	Map

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Balance Sheets

December 31, 2009 and 2008

<u>Assets</u>	<u>2009</u>	<u>2008</u>
Current assets:		
Cash and cash equivalents	\$ 35,711,410	3,538,805
Assets limited as to use	3,452,108	3,570,222
Investments	17,473,296	15,396,789
Patient accounts receivable, net of reserve for doubtful accounts of \$7,197,470 in 2009 and \$7,544,924 in 2008	40,777,987	39,909,502
Other receivables	3,832,674	1,364,482
Inventories	5,549,066	5,188,882
Prepaid expenses and other current assets	2,511,920	2,626,685
Due from affiliates, net	1,980,071	915,499
Net investment in direct financing lease	547,116	547,116
Estimated third-party payor settlements, net	-	4,445,345
Total current assets	111,835,648	77,503,327
Interest in and amounts due from Faxton-St. Luke's Healthcare Foundation	6,859,042	2,802,287
Investment in and amounts due from Faxchil Realty, Inc.	-	4,604,696
Investment in and amounts due from SLM Medical Office Building, Inc.	349,389	199,307
Due from affiliates, net	1,817,792	1,906,305
Assets limited as to use	5,144,858	5,226,874
Investments	4,528,164	4,528,164
Net investment in direct financing lease	3,779,935	3,999,719
Property and equipment, net	96,851,893	85,395,077
Unamortized debt issuance costs	1,294,268	1,509,813
Intangible assets	716,116	861,054
Other assets	3,648,503	3,497,619
Total assets	<u>\$ 236,825,608</u>	<u>192,034,242</u>

<u>Liabilities and Net Assets</u>	<u>2009</u>	<u>2008</u>
Current liabilities:		
Line of credit	\$ 2,030,000	-
Current portion of long-term debt	5,583,224	5,077,471
Current portion of capital lease obligations	3,756,113	3,331,994
Accounts payable	14,365,982	13,156,811
Accrued payroll, payroll taxes and benefits	8,570,127	8,846,849
Current portion of estimated self-insured liabilities	1,546,323	447,502
Accrued interest payable	725,359	854,229
Other current liabilities	629,212	538,716
Estimated third-party payor settlements, net	439,981	-
Total current liabilities	<u>37,646,321</u>	<u>32,253,572</u>
Long-term debt, net of current portion:		
Notes payable	11,642,070	6,631,440
Civic facility revenue bonds	36,541,481	41,336,391
Capital lease obligations	8,744,253	8,428,187
Total long-term debt, net of current portion	<u>56,927,804</u>	<u>56,396,018</u>
Unrealized loss on interest rate swaps	3,157,747	6,373,560
Estimated self-insured liabilities, net of current portion	3,440,304	2,623,357
Minority interest in Faxton Leasing, LLC	781,294	781,294
Total liabilities	<u>101,953,470</u>	<u>98,427,801</u>
Net assets:		
Unrestricted	127,851,704	87,272,767
Temporarily restricted	2,492,270	1,805,510
Permanently restricted	4,528,164	4,528,164
Total net assets	<u>134,872,138</u>	<u>93,606,441</u>
Commitments and contingencies		
Total liabilities and net assets	<u>\$ 236,825,608</u>	<u>192,034,242</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Statements of Operations and Changes in Net Assets

Years ended December 31, 2009 and 2008

	<u>2009</u>	<u>2008</u>
Unrestricted revenues, gains and other support:		
Net patient service revenue	\$ 261,722,254	249,205,909
Other revenue	6,950,804	6,128,313
Investment income, net of fees	316,834	837,528
Contributions	551,780	548,583
Net assets released from restrictions used for operations	<u>565</u>	<u>1,000</u>
Total unrestricted revenues, gains and other support	<u>269,542,237</u>	<u>256,721,333</u>
Expenses:		
Salaries and wages	110,584,124	103,970,224
Employee benefits	29,447,816	24,891,988
Supplies and other	101,396,611	99,280,172
Depreciation and amortization	13,348,634	12,013,602
NYS gross receipts taxes	671,614	-
Interest	3,918,905	3,714,557
Provision for bad debts	9,259,582	9,026,867
Loss (gain) on disposal of property and equipment	<u>326,246</u>	<u>(3,305)</u>
Total expenses	<u>268,953,532</u>	<u>252,894,105</u>
Net Income from continuing operations	<u>588,705</u>	<u>3,827,228</u>
Discontinued operations:		
Gain on operations of discontinued component	1,707,633	418,349
Gain on sale of discontinued component	<u>30,761,534</u>	<u>-</u>
Gain on discontinued operations	<u>32,469,167</u>	<u>418,349</u>
Excess of revenues over expenses	<u>\$ 33,057,872</u>	<u>4,245,577</u>

ST. ELIZABETH MEDICAL CENTER

Balance Sheets

December 31, 2009 and 2008

Assets	2009	2008
Current:		
Cash and cash equivalents	\$ 6,271,861	6,019,273
Current portion of assets whose use is limited	388,455	408,084
Investments	20,593,455	18,288,672
Patient accounts receivable, net of allowance for doubtful accounts of \$4,478,000 in 2009 and \$3,142,000 in 2008	23,971,266	24,254,321
Other receivables, net	560,497	664,635
Inventories of drugs and supplies	5,597,940	4,502,573
Prepaid expenses	493,919	400,078
Total current assets	57,877,393	54,537,636
Assets whose use is limited:		
Under bond indenture agreements	2,672,643	2,616,407
Restricted by donors	579,389	612,435
Property, plant, and equipment, net of accumulated depreciation and amortization	67,186,109	63,770,278
Interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	1,839,425	2,197,380
Other assets	1,196,229	1,284,668
Total assets	\$ 131,351,188	125,018,804
Liabilities and Net Assets		
Current:		
Current installments of long-term debt	\$ 1,295,000	1,170,000
Current installments of obligations under capital leases	632,634	603,594
Current installments of loans payable to Motherhouse	130,726	130,726
Accounts payable	17,761,335	15,501,699
Accrued expenses	4,874,154	5,518,828
Liabilities to third-party payors	11,427,173	11,338,911
Total current liabilities	36,121,022	34,263,758
Accrued pension liability	35,938,659	34,925,223
Long-term debt, excluding current installments	35,151,608	36,758,705
Obligations under capital leases, excluding current installments	2,273,354	2,862,930
Loans payable to Motherhouse, excluding current installments	1,830,163	1,960,889
Total liabilities	111,314,806	110,771,505
Net assets:		
Unrestricted	18,772,238	12,596,369
Temporarily restricted	887,830	1,275,616
Permanently restricted	376,314	375,314
Total net assets	20,036,382	14,247,299
Total liabilities and net assets	\$ 131,351,188	125,018,804

ST. ELIZABETH MEDICAL CENTER
Statements of Operations and Changes in Net Assets
Years ended December 31, 2009 and 2008

	<u>2009</u>	<u>2008</u>
Unrestricted revenue:		
Net patient service revenue	\$ 199,113,192	183,399,583
Other operating revenue	4,708,874	4,525,107
Unrestricted contributions	228,106	352,325
Investment income	894,163	902,659
Net assets released from restrictions for operations	23,616	17,850
Total unrestricted revenue, gains, and other support	<u>204,967,951</u>	<u>189,197,524</u>
Expenses:		
Salaries and wages	88,402,306	82,794,747
Professional fees	8,713,580	7,491,968
Employee benefits	22,263,856	20,745,352
Supplies and expenses	60,020,177	56,015,189
Utilities	2,436,372	3,129,197
Depreciation and amortization	8,161,091	8,024,001
Provision for doubtful accounts	7,276,636	6,868,172
Interest	1,953,752	2,218,335
Total expenses	<u>199,227,770</u>	<u>187,286,961</u>
Excess of revenue over expenses	5,740,181	1,910,563
Net unrealized gain (loss) on other than trading securities	261,831	(236,130)
Pension related changes other than net periodic pension cost	(827,954)	(10,662,662)
Increase in interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	25,853	336,103
Net assets released from restrictions for capital purchases	975,958	1,763,797
Increase (decrease) in unrestricted net assets	<u>6,175,869</u>	<u>(6,888,329)</u>
Temporarily restricted net assets:		
Contributions	979,969	656,900
Interest income on permanently restricted assets	17,146	20,384
Decrease in interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	(385,327)	—
Net assets released from restrictions	(999,574)	(1,781,647)
Decrease in temporarily restricted net assets	<u>(387,786)</u>	<u>(1,104,363)</u>
Increase in permanently restricted net assets – contributions	<u>1,000</u>	<u>32,200</u>
Change in net assets	5,789,083	(7,960,492)
Net assets at beginning of year	<u>14,247,299</u>	<u>22,207,791</u>
Net assets at end of year	<u>\$ 20,036,382</u>	<u>14,247,299</u>

Mohawk Valley Endoscopy Center

Pro-Forma Balance Sheet

***** Revised October 2010 *****

	<u>Beginning of Year</u>	
	One	January
	<u>2011</u>	
ASSETS		
CURRENT ASSETS		
Cash Balances	\$	785,241
Accounts Receivable - Net	\$	-
TOTAL CURRENT ASSETS	\$	785,241
PROPERTY		
Facility Improvements	\$	1,732,750
Equipment (net of depreciation)	\$	500,000
TOTAL PROPERTY	\$	2,232,750
INTANGIBLE ASSETS		
Project Start-Up Costs & Application Fees	\$	543,446
TOTAL ASSETS	\$	3,561,437
LIABILITIES AND NET ASSETS		
CURRENT LIABILITIES		
	\$	-
TOTAL CURRENT LIABILITIES	\$	-
LONG-TERM LIABILITIES		
Bank Loan for Working Capital	\$	219,345
Bank Loan for Facility Improvements & Start-Up	\$	1,810,972
Bank Loan for Equipment	\$	500,000
TOTAL LONG-TERM LIABILITIES	\$	2,530,317
TOTAL LIABILITIES	\$	2,530,317
LLC CAPITAL	\$	1,031,119
TOTAL LIABILITIES AND LLC CAPITAL	\$	3,561,437

ESTABLISHMENT CHECKLIST FOR AMBULATORY CARE SITE

APPLICATION: CON 092142-B Mohawk Valley EC, LLC

NATURE OF APPLICATION:

XX

PRIMARY CARE
SPECIALTY
Endoscopy & Colonoscopy

AUSPICE:

XX

NON PROFIT
PROPRIETARY
PUBLIC
- Limited Liability Company

AFFILIATIONS: None

UNIT COST:

YEAR ONE

YEAR THREE



OPERATING	\$ 282.04	\$ 263.71
CAPITAL	<u>\$ 114.96</u>	<u>\$ 98.89</u>
TOTAL	\$ 397.00	\$ 362.60

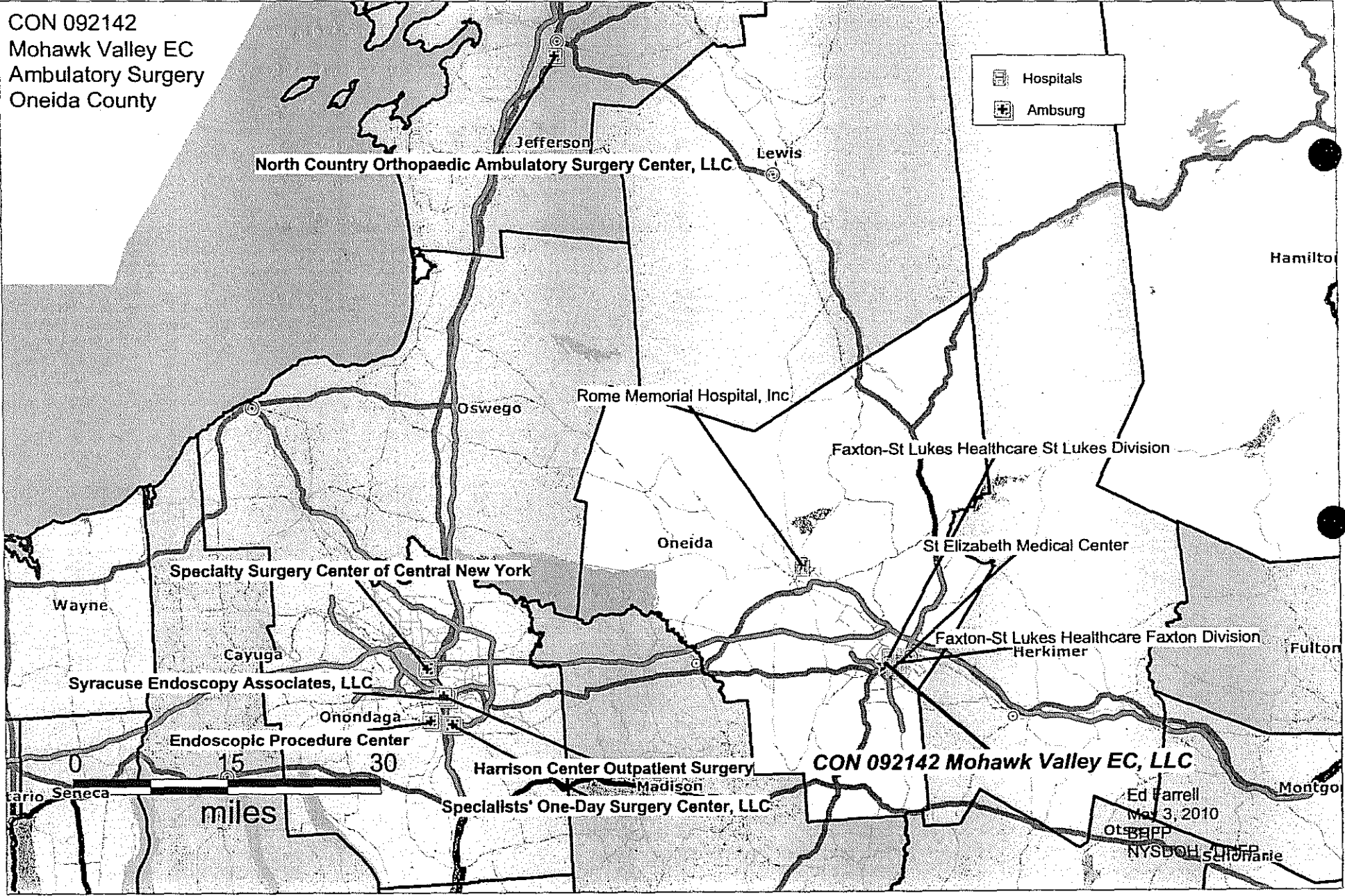
PAYOR SOURCE:

YEAR ONE

MEDICAID-FFS	2.0%
MEDICAID-MC	4.0%
MEDICARE-FFS	25.0%
COMMERCIAL-FFS	2.0%
COMMERCIAL-MC	64.9%
PRIVATE PAY	.1%
CHARITY	2.0%

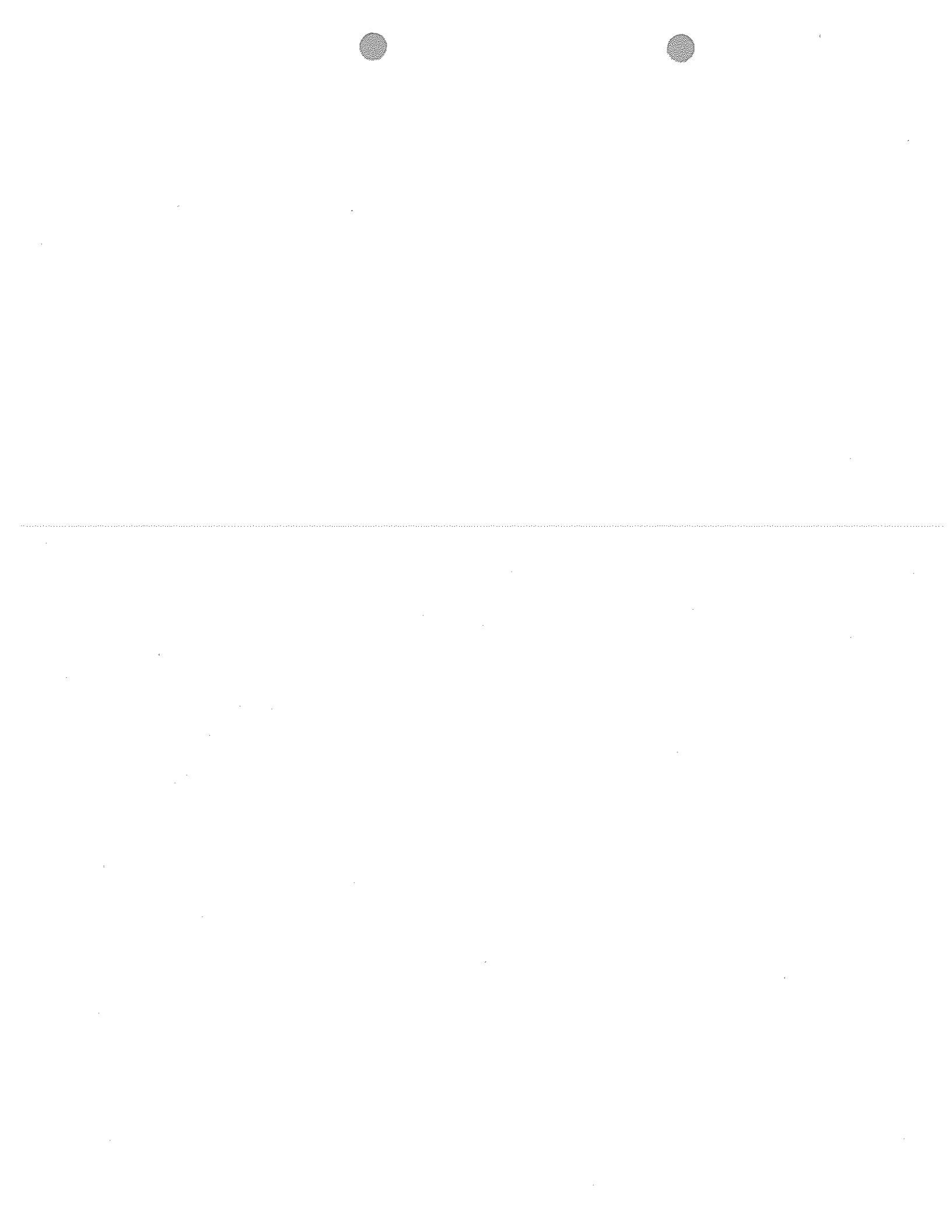
CON 092142
Mohawk Valley EC
Ambulatory Surgery
Oneida County

	Hospitals
	Amburg



CON 092142 Mohawk Valley EC, LLC

Ed Farrell
May 3, 2010
NYSDOH



RESOLUTION

RESOLVED, that the Public Health Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 19th day of November, 2010, having considered any advice offered by the Regional Health Systems Agency, the State Hospital Review and Planning Council, the staff of the New York State Department of Health, and the Establishment Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty endoscopic freestanding ambulatory surgery center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

092142

FACILITY/APPLICANT:

Mohawk Valley EC, LLC

APPROVAL CONTINGENT UPON:

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Section 2802.7 states that all sponsors whose applications require review by the State Hospital Review and 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 bank loan commitment for the applicant's financing acceptable to the Department. [BFA]
3. Submission of a working capital loan commitment acceptable to the Department. [BFA]
4. Submission of equipment leases acceptable to the Department. [BFA]
5. Submission of an executed transfer and affiliation agreement that is acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a staffing plan, acceptable to the Department, confirming that staff of the Center will be separate and distinct from staff of other entities. [HSP]
7. Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities. [HSP]
8. Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space. [HSP]
9. Submission of documentation, acceptable to the Department, that the clinical space will be used exclusively for this purpose. [HSP]
10. Submission of an agreement, acceptable to the Department, regarding the provision of quality oversight functions. [HSP]
11. Submission of evidence of a protocol ensuring all physicians practicing at the ASC commit, in writing, to maintain in good standing any responsibilities with all acute care hospitals where privileges have been granted. [HSP]
12. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided; and
 - Number of nosocomial infections recorded during the year in question. [RNR]
13. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]

14. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR]
15. Submission of a photocopy of the applicant's executed proposed amended and restated articles of organization, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
17. Submission of a photocopy of MVEC Holdings, LLC's executed proposed articles of organization, which is acceptable to the Department. [CSL]
18. Submission of a photocopy of MVEC Holdings, LLC's executed proposed operating agreement, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by August 1, 2011. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10 (a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

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

Mr. Jeffrey R. Rothman, M.S., M.B.A.
Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299





State Hospital Review and Planning Council

Project # 092142-B

Mohawk Valley EC, LLC

County: Oneida (Utica)

Program: Ambulatory Surgery Center

Purpose: Establishment and Construction

Submitted: November 13, 2009

Executive Summary

Description

Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center (MVEC), a recently-formed limited liability company, requests approval to establish and construct an Article 28 D&TC, to be located in leased space at 116 Business Park Drive, Utica. MVEC will be certified as a single-specialty freestanding ambulatory surgery center (FASC) in the discipline of gastroenterology, providing endoscopy and colonoscopy services.

This project was presented at the August 5, 2010 SHRPC meeting without Faxton-St. Luke's Healthcare (FSLH) and St. Elizabeth Medical Center (SEMC) as members of the applicant. On October 15, 2010, FSLH and SEMC, both not-for-profit corporations, became members of MVEC, with each having a 20% equity interest. Also on October 15, 2010, the original seven physicians, through a newly formed entity (MVEC Holdings, LLC), became the managing members of MVEC with a 60% equity interest. The proposed members of MVEC and MVEC Holdings, LLC and their ownership percentages are as follows:

<i>Proposed Member</i>	<i>Ownership</i>
Faxton-St. Luke's Healthcare	20.0%
St. Elizabeth Medical Center	20.0%
MVEC Holdings, LLC	60.0%

<i>MVEC Holdings, LLC Members</i>	<i>Ownership</i>
Stanley P. Weiselberg, M.D.	8.57148%
Norman R. Neslin, M.D.	8.57142%
Robert R. Pavelock, M.D.	8.57142%
Bradley F. Sklar, M.D.	8.57142%
Richard Cherpak, M.D.	8.57142%
Brett Gandhi, M.D.	8.57142%
Garth J. Garramone, D.O.	8.57142%
Total	100%

Total project costs are estimated at \$3,922,746.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

All seven gastroenterologists are partners in Digestive

Disease Medicine of Central New York, LLP (DDM). They will continue to perform outpatient endoscopies at the 4 area medical facilities (SEMC; Faxton-St. Luke's Healthcare-Faxton Division; Faxton-St. Lukes Healthcare-St. Lukes Division and Oneida Healthcare Center), but will add MVEC into their current rotation. DDM reports that there is a current backlog of 5,000 to 7,000 outpatient gastroenterology procedures in their service area. In order to reduce this backlog, they plan to recruit two new physicians in the next twelve months. The proposed FASC is considered essential to the recruitment of additional physicians and for MVEC to have sufficient capacity to meet the growing demand for colorectal screenings in the service area.

Program Summary

The applicant will enter into transfer and affiliation agreements for emergency and back-up services with FSLH (1.5 miles or 5 minutes in travel time) and SEMC (1.6 miles or 5 minutes in travel time). Staff have concluded the proposed managers of the LLC are persons of good moral character whose training and experience demonstrate competency to operate an ambulatory surgery center.

Financial Summary

Project costs will be met with \$811,774 in cash, \$800,000 in equipment leases, \$500,000 from a 7-year self-amortizing equipment loan, and a 10-year term loan of \$1,810,972 using a 15-year amortization schedule (M&T Bank has provided a letter of interest for both loans at a 6% fixed rate).

Budget:	<i>Revenues:</i>	\$ 4,087,719
	<i>Expenses:</i>	2,632,144
	<i>Gain/(Loss):</i>	\$ 1,455,575

Subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project involves the construction of an 11,436 SF single-specialty FASC to perform endoscopies. The facility will consist of four procedure rooms, one exam room, pre-and post procedure bays, and space for support functions.

Recommendations

Health Systems Agency

The Central New York HSA has chosen not to opine on this project.

Office of Health Systems Management

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Section 2802.7 states that all sponsors whose applications require review by the State Hospital Review and 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 bank loan commitment for the applicant's financing acceptable to the Department. [BFA]
3. Submission of a working capital loan commitment acceptable to the Department. [BFA]
4. Submission of equipment leases acceptable to the Department. [BFA]
5. Submission of an executed transfer and affiliation agreement that is acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a staffing plan, acceptable to the Department, confirming that staff of the Center will be separate and distinct from staff of other entities. [HSP]
7. Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities. [HSP]
8. Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space. [HSP]
9. Submission of documentation, acceptable to the Department, that the clinical space will be used exclusively for this purpose. [HSP]
10. Submission of an agreement, acceptable to the Department, regarding the provision of quality oversight functions. [HSP]
11. Submission of evidence of a protocol ensuring all physicians practicing at the ASC commit, in writing, to maintain in good standing any responsibilities with all acute care hospitals where privileges have been granted. [HSP]
12. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided; and
 - Number of nosocomial infections recorded during the year in question. [RNR]
13. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
14. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR]
15. Submission of a photocopy of the applicant's executed proposed amended and restated articles of organization, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]

17. Submission of a photocopy of MVEC Holdings, LLC's executed proposed articles of organization, which is acceptable to the Department. [CSL]
18. Submission of a photocopy of MVEC Holdings, LLC's executed proposed operating agreement, which is acceptable to the Department. [CSL]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by August 1, 2011. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10 (a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

State Council Recommendation
November 18, 2010.

OHSM
Recommendation
was adopted

LT.
12/18/10

Need Analysis

Background

MVEC plans to operate an ambulatory surgery center specializing in endoscopy services. The proposed center will have four operating rooms. There are seven gastroenterologists that have committed to perform the following volume of procedures at the proposed center:

<u>Physicians</u>	<u>Annual Procedures</u>
Stanley Weiselberg	815
Norman Neslin	850
Robert Pavelock	850
Bradley Sklar	850
Richard Cherkpak	850
Brett Ghandi	850
Garth Garramone	875
Total	6,000

<u>Existing Freestanding Ambulatory Surgery Centers — Central New York</u>		
<u>Facility</u>	<u>County</u>	<u>2008 Utilization</u>
Digestive Disease Center of CNY, LLC	Onondaga	NR
Endoscopic Procedure Center	Onondaga	4,243
Harrison Center Outpatient Surgery	Onondaga	3,869
North Country Orthopedic ASC	Jefferson	1,898
Specialists' One-Day Surgery	Onondaga	9,240
Specialty Surgery Center of CNY	Onondaga	6,905
Syracuse Endoscopy Associates	Onondaga	6,133

Source: SPARCS

Analysis

MVEC reports that three of the seven gastroenterologists are over 57 years of age. They have not been able to recruit new gastroenterologists for the last seven years. They report an ambulatory surgery center is needed in order to recruit new gastroenterologists to their practice.

The Digestive Disease Management (DDM) group's seven physicians currently perform approximately 20,000 outpatient procedures per year. DDM anticipates adding two new physicians within the first year. The applicant reports that each physician added to the practice will increase the surgical volume by 2,000 to 3,000 procedures. DDM states that the area currently lacks sufficient capacity to handle the new DDM physicians and the additional surgical volume they would generate.

DDM reports that there is a 10 to 14 week wait for endoscopy procedures, with approximately 500 patients waiting each week. The physicians estimate that there is a current backlog of 5,000 to 7,000 outpatient procedures.

DDM expects significant growth in screening colonoscopies and other outpatient endoscopic procedures based on the area's aging population and an increasing focus on preventive medicine.

DDM's physician practice has not been able to meet the service needs of adjacent counties such as Lewis and Chenango because the physicians are currently overextended, serving patients from the primary three counties, Oneida, Herkimer and Madison. According to data from the Expanded Behavioral Risk Factor Surveillance System (BRESS) Report: July 2008 – June 2009 (Age Adjusted), in counties outside New York City, 66.30 percent of adults aged 50 and older reported having a sigmoidoscopy or colonoscopy within the past 10 years. The chart below shows the BRESS results for the five county areas around Utica where the proposed facility will be located.

<u>Patients Having Had Sigmoidoscopy/Colonoscopy within the Past 10 years (Age Adjusted)</u>	
<u>County</u>	<u>Percentage Age 50 or Over</u>
Oneida	66.2
Chenango	51.3
Herkimer	59.8
Lewis	45.8
Madison	69.6
New York State Outside NYC	66.3

SOURCE: Behavioral Risk Factor Surveillance System (BRESS)

DDM states that outside the two counties (Oneida and Madison) that are primarily served by DDM, the other counties are below average for colorectal screenings.

The applicant states that the proposed ambulatory surgery center with recruitment of additional gastroenterologists, will lead to significant expansion of gastroenterology services for this five county region.

<u>Population Projections for Ages 50-74 by County for 2010-2020</u>			
<u>County</u>	<u>2010</u>	<u>2020</u>	<u>Change</u>
Chenango	15,199	16,200	1,001
Herkimer	18,331	19,412	1,081
Lewis	7,242	7,920	678
Madison	19,280	21,218	1,938
Oneida	63,183	67,588	4,405
Total	123,235	132,338	9,103

SOURCE: Cornell University Program on Applied Demographics New York State and County Population Projections by Age and Sex – Preliminary Population Projections by Age and Sex, New York State and 62 counties, 2005 – 2035.

The primary population targeted for colorectal screening (ages 50 – 75) is projected to increase by 9,103 (7.4 percent) in the five county area which DDM's proposed facility will serve.

DDM estimates that to bring Chenango, Lewis and Herkimer Counties up to the Upstate New York rate of colorectal screenings, they would need to perform an additional 4,956 colorectal screenings for these three counties.

The data indicate that these three counties are currently underserved. The growth in the population aged 50-74 demonstrates that the demand for colorectal screenings will increase.

DDM reports that their physicians currently perform the following procedures at area hospitals:

<u>Hospital</u>	<u>Annual Gastroenterology Procedures</u>
Faxton-St. Luke's	7,000
St. Elizabeth's	9,000
Oneida Community Hospital	5,000
Total	21,000

DDM's plan is to maintain the current volume of procedures performed at the area hospitals and to expand their practice through the recruitment of additional gastroenterologists that will generate the additional procedures that will be performed at the ambulatory surgery center.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

This freestanding single specialty ambulatory surgery center proposes to provide surgical services in the areas of gastroenterology, utilizing four operating rooms. The Center will be in operation 7:00 a.m. to 3:30 p.m. Monday through Friday. The Center intends to extend its hours as necessary to accommodate patient needs.

The list of procedures provided reflects the proposed services are consistent with the specialties of the physicians that have expressed interest in practicing at this Center. The Center intends to review this list annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

Staffing

Staffing will consist of 19.7 FTEs including registered nurses and technicians, under the supervision of the Center's medical director, Garth Garramone. Staffing is expected to increase to 21.7 FTEs by the third year of operation. Anesthesia services will be provided by board-certified or board-eligible anesthesiologists.

Back-up Support Services and Off-hour Coverage

Emergency, in-patient and back-up support services will be provided by Faxton St. Luke's Healthcare which is 1.5 miles and five minutes in travel time from the Center and St. Elizabeth's Medical Center, which is 1.6 miles or 5 minutes in travel time from the Center. An answering service, with access to the surgeon who performed the surgery or his/her on call physician, will be provided to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform with generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements. In addition, the applicant indicates the Center intends to receive accreditation from either the Accreditation Association of Ambulatory Health Care or Joint Commission on Accreditation of Healthcare Organizations within two years after opening.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Managing Member's Responsiveness to Community Need

The Managing Members, each with 14.2857% ownership, are as follows:

Richard Cherpak, M.D.
Brett Gandhi, M.D.
Garth Garramone, DO
Norman Neslin, M.D.
Robert Pavelock, M.D.
Bradley Sklar, M.D.
Stanley Weiselberg, M.D.

Characteristics of the governing body reflect responsiveness to community need in the use of a patient satisfaction measurement tool that will provide continuous, ongoing feedback to the organization for the total quality management improvement program and planning discussions. Input from members of the medical staff and patients will provide the basis for additional services and freed or reduced fee care to eligible patients.

Character and Competence

Staff from the Division of Certification and Surveillance reviewed the disclosure information submitted by the individuals 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 and relatives' ownership interest in other health care facilities. This review revealed the following:

MVEC Holdings, LLC (60% member)

<i>Name</i>	<i>Work History/Affiliated Facility</i>
Richard Cherpak, M.D.	Physician in private practice since 1993.
Brett Gandhi, M.D.	Physician in private practice since 1994.
Garth Garramone, D.O.	Physician in private practice since 2004.
Norman Neslin, M.D.	Physician in private practice since 1987.
Robert Pavelock, M.D.	Physician in private practice since 1987.
Bradley Sklar, M.D.	Physician in private practice since 1993.
Stanley Weiselberg, M.D.	Physician in private practice since 1984.

St. Elizabeth Medical Center (20% Member)

This is the board of the St. Elizabeth's Medical Center, which is the operator of both the hospital and the affiliated Certified Home Health Agency, named St. Elizabeth Certified Home Care.

<i>Name</i>	<i>Affiliated Facility</i>	<i>Work History</i>
Richard Zweifel		CPA with Gruver, Zweifel & Scott, LLP
Catherine McDonough Cominsky	Sitrin Health Center	Adjunct Professor at Utica College since 1998
Ramond Meler		Attorney with Bond, Schoeneck & King, PLLC since 2007
Gregory Evans		President and CEO of Indium Corporation of America since 1981 (manufacturing company)
Norman Siegel		Judge for the New York State Court of Claims since 2000.
Richard Ketcham	Mohawk Valley Heart Institute	President and CEO of St. Elizabeth Medical Center since September 2010. President and CEO of Brook Memorial Hospital from 1986 to 2009
Eric Yoss		Physician in private practice since 1988 and the Medical Director of Critical Care Services and the Medical Director of Respiratory Services at St. Elizabeth's Hospital
Harrison Hummell III		CEO and President of Hummel's Office Plus
Steven Williams, M.D.		Physician in private practice since 1998
Marianne Gaige	United Cerebral Palsy	President and CEO of Cathedral Corporation (printing company)
Fred Talarico, M.D.		Physician in private practice since 1986
Donna McGartland		Director of Ministry and Life Transitions fro Sisters of St. Francis and the Neumann Communities
Alfred Matt		President of Matt Brewing Company

Disclosures

All board members of St. Elizabeth Medical Center disclosed that: "In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976."

In addition in July of 2001, St. Elizabeth Medical Center entered into a settlement agreement with the United States in connection with an investigation into Medicare Claims submitted by St. Elizabeth Medical Center for certain clinical laboratory outpatient services from January 1989 to December 31, 1993. The case involved recommendations from a consulting firm that were relied upon by St. Elizabeth Medical Center. The allegations were settled, without admission with respect to any issue of law or fact for \$227,000. The claims for which the investigation and settlement pertained were prior to the service of any members of the existing Board of Trustees. However, the finalization of the investigation and the settlement took place during the Board service of Mr. Norman Siegel and Dr. Eric Yoss.

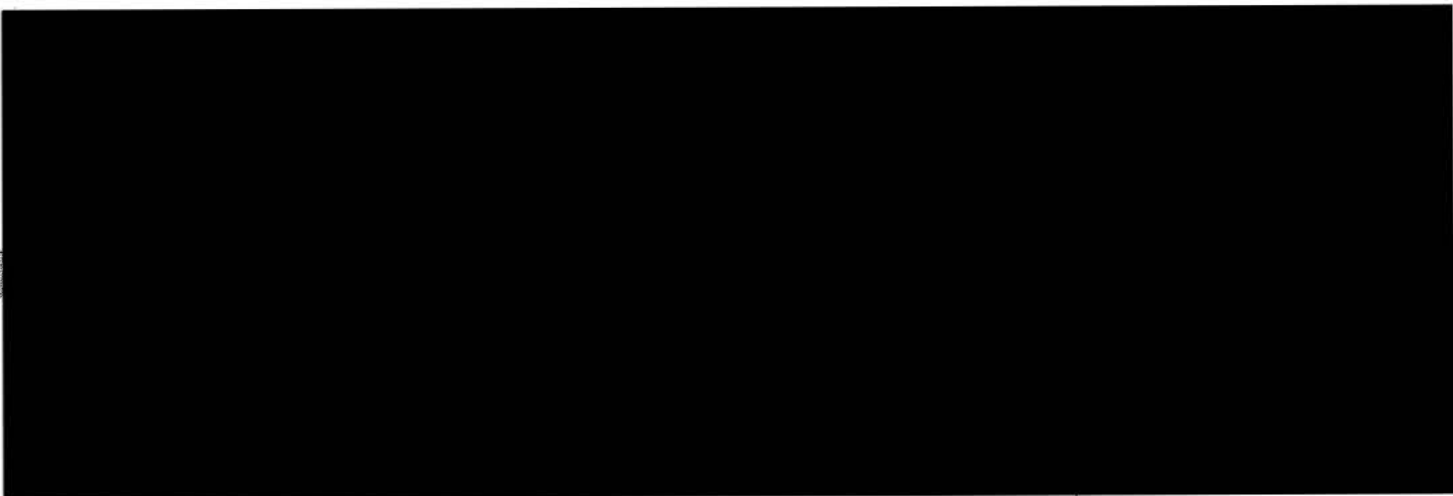
Faxton St. Luke's Healthcare (20% Member)

In addition to the affiliated facilities listed in the table below, all of the board members listed also serve as board members for the following entities:

- St. Luke's Home Residential Health Care Facility, Inc.
- Senior Network Health, LLC
- Mohawk Valley Home Care, LLC
- Visiting Nurse Association of Utica and Oneida County, Inc.

Name	Affiliated Facility	Work History
Domenic Aiello		Physician in private practice
Esther Bankert		Provost of the State University of New York Institute of Technology since 2009
Sidney Blatt		Physician in private practice since 1976
Martin Bull	- Folts Home, Inc. - Resource Center for Independent Living, Inc.	Secretary and Treasurer for Bull Bros., Inc. (petroleum distribution, convenience stores, and property management corporation)
Joan Compson	Mohawk Valley Heart Institute	Chief Financial Officer for Carbone Auto Group (auto dealership, management and realty company)
Leroy Cooley, M.D.		Physician in private practice since 1980
John Crossley		Administrator at the Utica School of Commerce since 1968
James Frederick, M.D.		Physician in private practice since 2000 and is an employee of Faxton St. Luke's Hospital
Gary Gildersleeve		Associate Executive Director for Upstate Cerebral Palsy from 2003 until his retirement in 2008
Todd Hutton		President and CEO of Utica College since 1998
Karen Leach		Vice President for Administration and Finance at Hamilton College since 2001
Christopher Max, M.D.		Physician in private practice

Gregory McLean	- The House of the Good Shepherd - Presbyterian Homes and Services	President of Caruso McLean and Company, Inc. (investment advising company)
Roger McReynolds		Vice President for Performance Improvement at Faxton St. Luke's Healthcare since 2007
Michael Paparone		President and CEO of ECR International (HVAC manufacturing company) since 2008
William Parker, M.D.		Physician employed by Faxton St. Luke's Healthcare since 2001
Scott Perra	- Hospice and Palliative Care - Mohawk Valley Heart Institute	President and CEO of St. Luke's Healthcare since 2009
James Stewart	Presbyterian Home	President and CEO of Stewart Associates, LLC (insurance brokerage and consulting company) since 1999
Stephen Sweet	Mohawk Valley Heart Institute	Owner of Sweet Products, LLC (distribution company) since 1993
Richard Tantillo		Vice President for Communications and Development at Hamilton College since 1994
Bonnie Woods		Trust Executive for Bank of America since 1991



Associated Facility Histories

The individuals above disclosed affiliations as noted, either personally or by any member of their immediate family. The 10 year surveillance history of these facilities was reviewed. Sources of information include the files, records, and reports found in the Division of Certification and Surveillance and Office of Long Term Care.

Enforcement Histories of Applicant and Associated Facilities

<u>Facility</u>	<u>Year</u>	<u>Fine</u>
Faxton St. Lukes Hospital	2003	\$20,000 for failure to adequately limit a physician's practice.
St. Elizabeth Medical Center	2005	\$4,000 for an incident related to wrong sided surgery.
St. Elizabeth Certified Home Care	2007	\$10,000 with \$5,000 of that amount suspended contingent upon maintenance of compliance for three years.
St. Luke's Home Residential Health Care Facility	2001	\$2,000 for deficiencies related to quality of care
St. Luke's Home Residential Health Care Facility	2007	\$2,000 for deficiencies related to pressure sores and nutrition.

For the enforcement actions listed above, the facilities implemented plans of correction that were monitored by Department staff following the enforcement action.

The review found that there were no cited violations that threatened or resulted in direct, significant harm to the health, safety, or welfare of patients, and that any of the relatively minor citations were promptly corrected with appropriate remedial action. Based on this information staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past ten years.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Background

The applicant has submitted an executed lease for the proposed site, the terms are summarized below:

- Date:* October 15, 2010
- Premises:* 11,436 square feet located at 116 Business Park Drive, Utica, New York
- Landlord:* 116 Business Park Associates, LLC
- Lessee:* Mohawk Valley EC, LLC
- Term:* 10 years at \$251,592 per year. (\$22.00 per sq. ft)
Renewal - two 5-year terms - \$276,751 per year for the 1st 5-year term & \$304,426 per year for the 2nd 5-year term
- Provisions:* Responsible for utilities, maintenance and increases in real estate taxes and operating costs.

The seven members of MVEC Holdings, LLC, equally own the landlord, 116 Business Park Associates, LLC. The applicant has provided realtor letter's attesting to the rental rate as being of fair market value.

Total Project Cost and Financing

Total project costs for renovation and acquisition of moveable equipment are estimated at \$3,922,746, broken down as follows:

Renovation & Demolition	\$1,732,750
Design Contingency	173,275
Construction Contingency	173,275
Planning Consultant Fees	140,000
Architect/Engineering Fees	200,000
Other Fees (Consultant, etc.)	180,000
Movable Equipment	1,300,000
CON Application Fee	2,000
CON Processing Fee	21,446
Total Project Cost	\$3,922,746

Project costs are based on a February 1, 2011 start date with a six month construction period.

The applicant's financing plan appears as follows:

Equity Contribution	\$811,774
Equipment Leases	800,000
Bank Loan – equipment (6%, 7-year term)	500,000
Bank Loan –facility (6%, 10-year term, 15 year amortization)	1,810,972
Total	\$3,922,746

A letter of interest has been provided by Manufactures and Traders Trust Company (M & T Bank). The members of the applicant have provided affidavits committing to fund the balloon payment if at the end of ten years, satisfactory refinancing is not available.

Operating Budget

The applicant has submitted first and third year operating budgets, in 2010 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,377,834	\$4,087,719
Expenses:		
Operating	\$1,692,250	\$1,914,291
Capital	<u>689,729</u>	<u>717,853</u>
Total Expenses	\$2,381,979	\$2,632,144
Net Income (Loss)	<u>\$995,855</u>	<u>\$1,455,575</u>
Utilization: (procedures)	6,000	7,259
Cost Per Procedure	\$397.00	\$362.60

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

Medicaid Fee-For-Service	2.0%
Medicaid Managed Care	4.0%
Medicare Fee-For-Service	25.0%
Commercial Fee-For-Service	2.0%
Commercial Manage Care	64.9%
Private Pay	.1%
Charity	2.0%

Utilization and expense assumptions are based on comparable diagnostic and treatment centers in New York State, as well as the physicians' experience in operating a private practice. The applicant has submitted physician referral letters in support of utilization projections. A sensitivity analysis was performed, illustrating how all costs were covered in the first year at 70.6% of budgeted procedures or 4,235 procedures. By the third year, the breakeven point drops to 64.9% of the budgeted procedures.

Capability and Feasibility

The total project cost of \$3,922,746 will be funded as follows; \$811,774 from Mohawk Valley EC proposed members, \$800,000 through equipment leases, and \$2,310,972 from two loans provided by M&T Bank at stated terms.

Working capital requirements are estimated at \$438,691, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest to finance \$219,345 at an expected interest rate of 6% with a five year term. The balance of \$219,345 is being contributed by the proposed members of Mohawk Valley EC.

Presented as BFA Attachments A - C, are MVEC Holdings, LLC members' personal net worth statements, 2009 certified financial summary for Faxton-St. Luke's Healthcare, and 2009 certified financial summary for St. Elizabeth Medical Center. A review of attachments A - C indicates there are sufficient liquid resources to meet the equity and working capital requirements. Presented as BFA Attachment D, is Mohawk Valley EC pro forma balance sheet that shows operations will start off with \$1,031,119 in equity.

A review of BFA Attachment B shows Faxton-St. Luke's Healthcare and subsidiaries had an excess of revenues over expenses of \$33,057,872 in 2009 and \$4,245,577 in 2008. A major portion of 2009 income came from the sale of a wholly owned subsidiary, Faxchil Realty and its subsidiary Centrex Clinical Laboratories, Inc., to Laboratory Corporation of American Holdings. The hospital realized a \$32,469,167 gain on the transaction which helped to bring 2009's working capital to \$74,189,327 and 2009's net assets to \$134,872,138.

A review of BFA Attachment C, reveals St. Elizabeth Medical Center had an excess of revenues over expenses of \$5,740,181 in 2009 and \$1,910,563 in 2008. While the hospital had positive operating results in 2008, they had pension related charges that caused net assets to decline to \$14,247,299. During 2009, net asset increased by \$5,789,083 bringing its year end balance to \$20,036,382. At the end of 2009 working capital stood at \$21,756,371.

Mohawk Valley EC projects an operating excess of \$995,855 and \$1,455,575 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies while commercial payers are based on experience.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The applicant is proposing to build a new ambulatory surgery center (ASC) on the second floor of an existing office building. One smoke compartment will have the clinical spaces such as the four procedure rooms, prep/recovery bays, nourishment, nurse station, staff lounge and support areas. The other smoke compartment will have the non-clinical spaces such as the reception and waiting areas, offices, locker rooms, exam room, conference room and staff lounge.

Environmental Review

The Department has deemed this project to be a TYPE II Action that will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Members of MVEC Holdings, LLC
BFA Attachment B	Financial Summary for 2009, Faxton-St. Luke's Healthcare
BFA Attachment C	Financial Summary for 2009, St. Elizabeth Medical Center
BFA Attachment D	Pro Forma Balance Sheet of Mohawk Valley EC, LLC
BFA Attachment E	Establishment Checklist for Ambulatory Care Sites
BHFP Attachment	Map

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Balance Sheets

December 31, 2009 and 2008

<u>Assets</u>	<u>2009</u>	<u>2008</u>
Current assets:		
Cash and cash equivalents	\$ 35,711,410	3,538,805
Assets limited as to use	3,452,108	3,570,222
Investments	17,473,296	15,396,789
Patient accounts receivable, net of reserve for doubtful accounts of \$7,197,470 in 2009 and \$7,544,924 in 2008	40,777,987	39,909,502
Other receivables	3,832,674	1,364,482
Inventories	5,549,066	5,188,882
Prepaid expenses and other current assets	2,511,920	2,626,685
Due from affiliates, net	1,980,071	915,499
Net investment in direct financing lease	547,116	547,116
Estimated third-party payor settlements, net	-	4,445,345
Total current assets	111,835,648	77,503,327
Interest in and amounts due from Faxton-St. Luke's Healthcare Foundation		
	6,859,042	2,802,287
Investment in and amounts due from Faxchil Realty, Inc.		
	-	4,604,696
Investment in and amounts due from SLM Medical Office Building, Inc.		
	349,389	199,307
Due from affiliates, net	1,817,792	1,906,305
Assets limited as to use	5,144,858	5,226,874
Investments	4,528,164	4,528,164
Net investment in direct financing lease	3,779,935	3,999,719
Property and equipment, net	96,851,893	85,395,077
Unamortized debt issuance costs	1,294,268	1,509,813
Intangible assets	716,116	861,054
Other assets	3,648,503	3,497,619
Total assets	\$ 236,825,608	192,034,242

<u>Liabilities and Net Assets</u>	<u>2009</u>	<u>2008</u>
Current liabilities:		
Line of credit	\$ 2,030,000	-
Current portion of long-term debt	5,583,224	5,077,471
Current portion of capital lease obligations	3,756,113	3,331,994
Accounts payable	14,365,982	13,156,811
Accrued payroll, payroll taxes and benefits	8,570,127	8,846,849
Current portion of estimated self-insured liabilities	1,546,323	447,502
Accrued interest payable	725,359	854,229
Other current liabilities	629,212	538,716
Estimated third-party payor settlements, net	439,981	-
Total current liabilities	<u>37,646,321</u>	<u>32,253,572</u>
Long-term debt, net of current portion:		
Notes payable	11,642,070	6,631,440
Civic facility revenue bonds	36,541,481	41,336,391
Capital lease obligations	8,744,253	8,428,187
Total long-term debt, net of current portion	<u>56,927,804</u>	<u>56,396,018</u>
Unrealized loss on interest rate swaps	3,157,747	6,373,560
Estimated self-insured liabilities, net of current portion	3,440,304	2,623,357
Minority interest in Faxton Leasing, LLC	781,294	781,294
Total liabilities	<u>101,953,470</u>	<u>98,427,801</u>
Net assets:		
Unrestricted	127,851,704	87,272,767
Temporarily restricted	2,492,270	1,805,510
Permanently restricted	4,528,164	4,528,164
Total net assets	<u>134,872,138</u>	<u>93,606,441</u>
Commitments and contingencies		
Total liabilities and net assets	<u>\$ 236,825,608</u>	<u>192,034,242</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Statements of Operations and Changes in Net Assets

Years ended December 31, 2009 and 2008

	<u>2009</u>	<u>2008</u>
Unrestricted revenues, gains and other support:		
Net patient service revenue	\$ 261,722,254	249,205,909
Other revenue	6,950,804	6,128,313
Investment income, net of fees	316,834	837,528
Contributions	551,780	548,583
Net assets released from restrictions used for operations	<u>565</u>	<u>1,000</u>
Total unrestricted revenues, gains and other support	<u>269,542,237</u>	<u>256,721,333</u>
Expenses:		
Salaries and wages	110,584,124	103,970,224
Employee benefits	29,447,816	24,891,988
Supplies and other	101,396,611	99,280,172
Depreciation and amortization	13,348,634	12,013,602
NYS gross receipts taxes	671,614	-
Interest	3,918,905	3,714,557
Provision for bad debts	9,259,582	9,026,867
Loss (gain) on disposal of property and equipment	<u>326,246</u>	<u>(3,305)</u>
Total expenses	<u>268,953,532</u>	<u>252,894,105</u>
Net Income from continuing operations	<u>588,705</u>	<u>3,827,228</u>
Discontinued operations:		
Gain on operations of discontinued component	1,707,633	418,349
Gain on sale of discontinued component	<u>30,761,534</u>	<u>-</u>
Gain on discontinued operations	<u>32,469,167</u>	<u>418,349</u>
Excess of revenues over expenses	<u>\$ 33,057,872</u>	<u>4,245,577</u>

ST. ELIZABETH MEDICAL CENTER

Balance Sheets

December 31, 2009 and 2008

Assets	2009	2008
Current:		
Cash and cash equivalents	\$ 6,271,861	6,019,273
Current portion of assets whose use is limited	388,455	408,084
Investments	20,593,455	18,288,672
Patient accounts receivable, net of allowance for doubtful accounts of \$4,478,000 in 2009 and \$3,142,000 in 2008	23,971,266	24,254,321
Other receivables, net	560,497	664,635
Inventories of drugs and supplies	5,597,940	4,502,573
Prepaid expenses	493,919	400,078
Total current assets	<u>57,877,393</u>	<u>54,537,636</u>
Assets whose use is limited:		
Under bond indenture agreements	2,672,643	2,616,407
Restricted by donors	579,389	612,435
Property, plant, and equipment, net of accumulated depreciation and amortization	67,186,109	63,770,278
Interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	1,839,425	2,197,380
Other assets	1,196,229	1,284,668
Total assets	<u>\$ 131,351,188</u>	<u>125,018,804</u>
Liabilities and Net Assets		
Current:		
Current installments of long-term debt	\$ 1,295,000	1,170,000
Current installments of obligations under capital leases	632,634	603,594
Current installments of loans payable to Motherhouse	130,726	130,726
Accounts payable	17,761,335	15,501,699
Accrued expenses	4,874,154	5,518,828
Liabilities to third-party payors	11,427,173	11,338,911
Total current liabilities	<u>36,121,022</u>	<u>34,263,758</u>
Accrued pension liability	35,938,659	34,925,223
Long-term debt, excluding current installments	35,151,608	36,758,705
Obligations under capital leases, excluding current installments	2,273,354	2,862,930
Loans payable to Motherhouse, excluding current installments	1,830,163	1,960,889
Total liabilities	<u>111,314,806</u>	<u>110,771,505</u>
Net assets:		
Unrestricted	18,772,238	12,596,369
Temporarily restricted	887,830	1,275,616
Permanently restricted	376,314	375,314
Total net assets	<u>20,036,382</u>	<u>14,247,299</u>
Total liabilities and net assets	<u>\$ 131,351,188</u>	<u>125,018,804</u>

ST. ELIZABETH MEDICAL CENTER

Statements of Operations and Changes in Net Assets

Years ended December 31, 2009 and 2008

	2009	2008
Unrestricted revenue:		
Net patient service revenue	\$ 199,113,192	183,399,583
Other operating revenue	4,708,874	4,525,107
Unrestricted contributions	228,106	352,325
Investment income	894,163	902,659
Net assets released from restrictions for operations	23,616	17,850
Total unrestricted revenue, gains, and other support	<u>204,967,951</u>	<u>189,197,524</u>
Expenses:		
Salaries and wages	88,402,306	82,794,747
Professional fees	8,713,580	7,491,968
Employee benefits	22,263,856	20,745,352
Supplies and expenses	60,020,177	56,015,189
Utilities	2,436,372	3,129,197
Depreciation and amortization	8,161,091	8,024,001
Provision for doubtful accounts	7,276,636	6,868,172
Interest	1,953,752	2,218,335
Total expenses	<u>199,227,770</u>	<u>187,286,961</u>
Excess of revenue over expenses	5,740,181	1,910,563
Net unrealized gain (loss) on other than trading securities	261,831	(236,130)
Pension related changes other than net periodic pension cost	(827,954)	(10,662,662)
Increase in interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	25,853	336,103
Net assets released from restrictions for capital purchases	975,958	1,763,797
Increase (decrease) in unrestricted net assets	<u>6,175,869</u>	<u>(6,888,329)</u>
Temporarily restricted net assets:		
Contributions	979,969	656,900
Interest income on permanently restricted assets	17,146	20,384
Decrease in interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	(385,327)	—
Net assets released from restrictions	(999,574)	(1,781,647)
Decrease in temporarily restricted net assets	<u>(387,786)</u>	<u>(1,104,363)</u>
Increase in permanently restricted net assets – contributions	1,000	32,200
Change in net assets	5,789,083	(7,960,492)
Net assets at beginning of year	<u>14,247,299</u>	<u>22,207,791</u>
Net assets at end of year	<u>\$ 20,036,382</u>	<u>14,247,299</u>

Mohawk Valley Endoscopy Center

Pro-Forma Balance Sheet

*** Revised October 2010 ***

		Beginning of Year One January 2011
ASSETS		
CURRENT ASSETS		
Cash Balances	\$	785,241
Accounts Receivable - Net	\$	-
TOTAL CURRENT ASSETS	\$	785,241
PROPERTY		
Facility Improvements	\$	1,732,750
Equipment (net of depreciation)	\$	500,000
TOTAL PROPERTY	\$	2,232,750
INTANGIBLE ASSETS		
Project Start-Up Costs & Application Fees	\$	543,446
TOTAL ASSETS	\$	3,561,437
 LIABILITIES AND NET ASSETS		
CURRENT LIABILITIES		
TOTAL CURRENT LIABILITIES	\$	-
LONG-TERM LIABILITIES		
Bank Loan for Working Capital	\$	219,345
Bank Loan for Facility Improvements & Start-Up	\$	1,810,972
Bank Loan for Equipment	\$	500,000
TOTAL LONG-TERM LIABILITIES	\$	2,530,317
TOTAL LIABILITIES	\$	2,530,317
 LLC CAPITAL	\$	1,031,119
 TOTAL LIABILITIES AND LLC CAPITAL	\$	3,561,437

ESTABLISHMENT CHECKLIST FOR AMBULATORY CARE SITE

APPLICATION: CON 092142-B Mohawk Valley EC, LLC

NATURE OF APPLICATION:

XX

PRIMARY CARE
SPECIALTY
Endoscopy & Colonoscopy

AUSPICE:

XX

NON PROFIT
PROPRIETARY
PUBLIC
- Limited Liability Company

AFFILIATIONS: None

UNIT COST:

YEAR ONE

YEAR THREE



OPERATING	\$ 282.04	\$ 263.71
CAPITAL	\$ 114.96	\$ 98.89
TOTAL	\$ 397.00	\$ 362.60

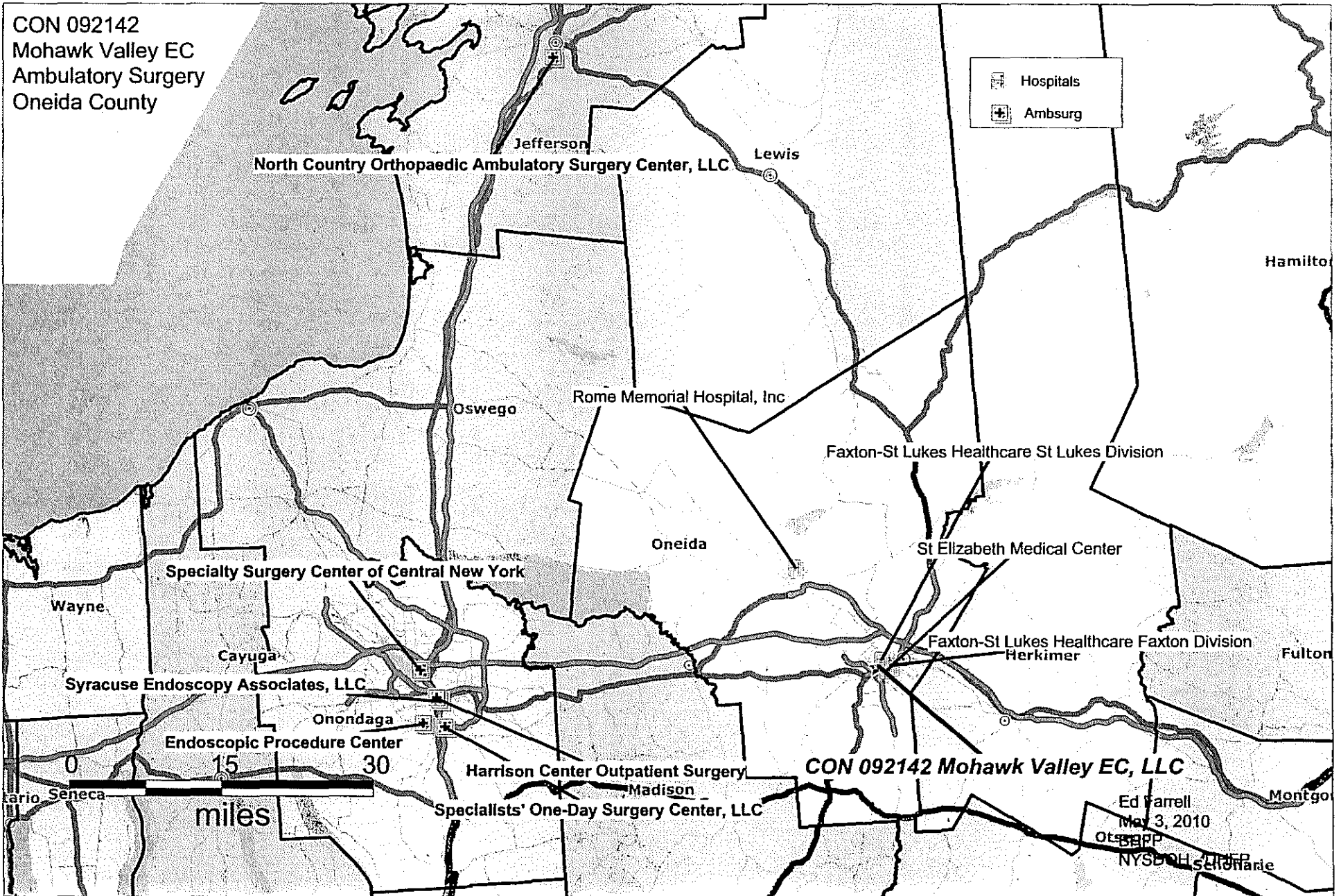
PAYOR SOURCE:

YEAR ONE

MEDICAID-FFS	2.0%
MEDICAID-MC	4.0%
MEDICARE-FFS	25.0%
COMMERCIAL-FFS	2.0%
COMMERCIAL-MC	64.9%
PRIVATE PAY	.1%
CHARITY	2.0%

CON 092142
Mohawk Valley EC
Ambulatory Surgery
Oneida County

	Hospitals
	Amburg



Ed Farrell
May 3, 2010
Ots
NYSDOH

092142 - Mohawk Valley EC, LLC

DATE: July 8, 2010 (TMJ 7/13/10)

BUREAU OF ARCHITECTURAL AND ENGINEERING REVIEW

GREENSHEET SUMMARY:

This project involves the construction of an 11,436 SF freestanding single-specialty ambulatory surgery center to perform endoscopies. The facility will be constructed in space located on the second floor of an existing office building.

REVIEW SUMMARY:

The applicant is proposing to build a new ambulatory surgery center (ASC) on the second floor of an existing office building. One smoke compartment will have the clinical spaces such as the four procedure rooms, prep/recovery bays, nourishment, nurse station, staff lounge and support areas. The other smoke compartment will have the non-clinical spaces such as the reception and waiting areas, offices, locker rooms, exam room, conference room and staff lounge.

ENVIRONMENTAL REVIEW:

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

ANALYSIS:

Conditions of Approval

The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01 (AER).

The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction (AER).

The applicant shall complete construction by August 1, 2011. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner.

RECOMMENDATION:

Staff of the Bureau of Architectural and Engineering Facility Planning recommends approval.

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

November 10, 2010

Ann Gormley
Consultant
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

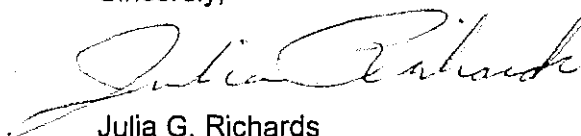
RE: 092142-B
Mohawk Valley EC, LLC
(Oneida County)
Establish and construct a single-specialty, endoscopic
ambulatory surgery center located at
116 Business Park Dr., Utica; Add Faxton St. Luke's
Healthcare and St. Elizabeth Medical Center to
ownership, each with 20% interests

Dear Ms. Gormley:

Please be advised that the above captioned application has been scheduled for review by the Project Review Committee of the State Hospital Review and Planning Council on Thursday, November 18, 2010, at 10:00 a.m., and will be considered on the same day approximately 12:00 p.m. by the State Hospital Review and Planning Council. Both meetings will be held in Meeting Rooms #2-4, Concourse Level, Empire State Plaza, Albany, New York. A copy of the exhibit, to be reviewed at the meeting, is enclosed.

The above stated meetings can be accessed via webcast through the following internet address: www.health.state.ny.us/events/webcasts

Sincerely,



Julia G. Richards
Executive Secretary
State Hospital Review and Planning Council

Enclosures

**092152 Need Analysis
Lower Manhattan Health District**

Project Description

The New York City Department of Health and Mental Hygiene requests approval for a complete renovation of the Chelsea District Health Center at 303 Ninth Ave. in Manhattan.

Need Summary

The Chelsea District Health Center plans a total renovation of the existing clinic.

The focus of this clinic is immunizations, TB services, and STD services. The Chelsea area has an elevated rate of HIV diseases and sexually transmitted diseases.

The renovated clinic will provide improved access to primary care services.

From a need perspective, approval is recommended.

Analysis

The Chelsea District Health Center consists of three stories and a basement. The basement will contain the Immunization Clinic and other support spaces. The first floor will house an STD Intake/Triage Clinic and an STD Express and Rapid Test Clinic. The second floor will house the STD Medical Clinic. The TB Clinic is on the third floor.

The death rate due to HIV disease in the Chelsea area is higher than NYC overall. Hospitalizations due to alcohol and drugs are higher in this community than NYC as a whole. In addition to high rates of HIV, there are elevated rates of sexually transmitted diseases.

Utilization

<i>Service</i>	<i>2009 Current Year</i>	<i>1st Year</i>	<i>3rd Year</i>
Immunization Visits	18,539	19,188	20,555
TB Clinic Visits	5,946	6,154	6,592
STD Clinic Visits	22,750	23,546	25,223
Total	47,235	48,888	52,370

With the expanded space, utilization is projected to increase by 10.8 percent by the third year of operation.

Conclusion

From a need prospective, approval is recommended.

092142 Financial Analysis

Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center

FINDINGS: CONTINGENT APPROVAL

The applicant has demonstrated the capability to proceed in a financially feasible manner, contingent upon:

Submission of a bank loan commitment for the applicant's financing acceptable to the Department of Health. (BFA)

Submission of a working capital loan commitment acceptable to the Department of Health. (BFA)

Submission of equipment leases acceptable to the Department of Health. (BFA)

DESCRIPTION

Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center (Mohawk Valley EC), a limited liability company recently formed to specifically pursue this CON application, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC). Mohawk Valley EC will be certified as a single-specialty freestanding ambulatory center (FASC) in the discipline of gastroenterology, providing endoscopy and colonoscopy services. The proposed FASC will lease 11,436 square feet of space in a to-be-renovated multi-purpose building located at 116 Business Park Drive, Utica. The FASC will be located on the second floor and consist of four procedure rooms, one exam room, pre-and post procedure bays, along with space for support functions.

This project was presented at the August 5, 2010 meeting of the State Hospital Review and Planning Council (SHRPC) without Faxton-St. Luke's Healthcare and St. Elizabeth Medical Center as members of the proposed applicant. On October 15, 2010, Faxton-St. Luke's Healthcare (FSLH) and St. Elizabeth Medical Center (SEMC), both not-for-profit corporations, became members of Mohawk Valley EC, with each having a twenty percent (20%) equity interest. Also on October 15, 2010, the original seven physicians through a newly formed entity (MVEC Holdings, LLC) became the managing members of Mohawk Valley EC with a sixty percent (60%) equity interest.

The proposed members of Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center and their ownership percentages are as follows:

<u>Proposed Member</u>	<u>Ownership Percentage</u>
Faxton-St. Luke's Healthcare	20.0%
St. Elizabeth Medical Center	20.0%
MVEC Holdings, LLC	<u>60.0%</u>
Total	100.00%

The members of MVEC Holdings, LLC and their ownership percentages are as follows:

<u>MVEC Holdings, LLC Members</u>	<u>Ownership Percentage</u>
Stanley P. Weiselberg, M.D.	8.57148%

Norman R. Neslin, M.D.	8.57142%
Robert R. Pavelock, M.D.	8.57142%
Bradley F. Sklar, M.D.	8.57142%
Richard Cherpak, M.D.	8.57142%
Brett Gandhi, M.D.	8.57142%
Garth J. Garramone, D.O.	<u>8.57142%</u>
Total	60.0%

The seven proposed members of MVEC Holdings, LLC are also partners in Digestive Disease Medicine of Central New York, LLP (DDM). During 2008, the seven gastroenterologists performed 19,173 outpatient endoscopy procedures at four area medical facilities; St. Elizabeth Medical Center, Faxton-St. Luke's Healthcare-Faxton Division, Faxton-St. Luke's Healthcare-St. Luke's Division, and Oneida Healthcare Center. Mohawk Valley EC believes that the proposed FASC will complement the other facilities mentioned above, reduce the wait time for an endoscopy procedure, help them recruit one or two additional gastroenterologists, and meet the needs of the area's aging population.

FINANCIAL SUMMARY

Total project cost of \$3,922,746 will be met through; \$811,774 in cash, \$800,000 in equipment leases, \$500,000 from a 7 year self-amortizing equipment loan, and the remaining \$1,810,972 will be provided through a 10 year term loan using a 15 year amortization schedule. Manufacturers and Traders Trust Company (M&T Bank) has provided a letter of interest for both loans at a 6% fix rate of interest.

Budget:	Revenues:	\$4,087,719
	Expenses:	<u>\$2,632,144</u>
	Gain:	\$1,455,575

Subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

FINANCIAL ANALYSIS

LEASE RENTAL AGREEMENT

The applicant has submitted an executed lease for the proposed site, the terms are summarized below:

Date:	October 15, 2010
Premises:	11,436 square feet located at 116 Business Park Drive, Utica, New York
Landlord:	116 Business Park Associates, LLC
Lessee:	Mohawk Valley EC, LLC
Term:	10 years at \$251,592 per year (\$22.00 per sq. ft) Renewal - two 5-year terms - \$276,751 per year for the 1 st 5-year term & \$304,426 per year for the 2 nd 5-year term
Provisions:	Responsible for utilities, maintenance and increases in real estate taxes and operating costs.

The seven members of MVEC Holdings, LLC, equally own the landlord, 116 Business Park Associates, LLC. The applicant has provided realtor letter's attesting to the rental rate as being of fair market value.

TOTAL PROJECT COST AND FINANCING

Total project costs for renovation and acquisition of moveable equipment are estimated at \$3,922,746, broken down as follows:

Renovation & Demolition	\$1,732,750
Design Contingency	173,275
Construction Contingency	173,275
Planning Consultant Fees	140,000
Architect/Engineering Fees	200,000
Other Fees (Consultant, etc.)	180,000
Movable Equipment	1,300,000
CON Application Fee	2,000
CON Processing Fee	<u>21,446</u>
Total Project Cost	\$3,922,746

Project costs are based on a February 1, 2011 start date with a six month construction period.

The applicant's financing plan appears as follows:

Equity Contribution	\$811,774
Equipment Leases	800,000
Bank Loan – equipment (6%, 7-year term)	500,000
Bank Loan –facility (6%, 10-year term, 15 year amortization)	<u>1,810,972</u>
Total	\$3,922,746

A letter of interest has been provided by Manufactures and Traders Trust Company (M & T Bank). The members of the applicant have provided affidavits to fund the balloon payment if at the end of ten years satisfactory refinancing is not available.

OPERATING BUDGET

The applicant has submitted first and third years operating budgets, in 2010 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,377,834	\$4,087,719
Expenses:		
Operating	\$1,692,250	\$1,914,291
Capital	<u>689,729</u>	<u>717,853</u>
Total Expenses	\$2,381,979	\$2,632,144
Net Income (Loss)	<u>\$995,855</u>	<u>\$1,455,575</u>
Utilization: (procedures)	6,000	7,259

Cost Per Procedure

\$397.00

\$362.60

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

Medicaid Fee-For-Service	2.0%
Medicaid Managed Care	4.0%
Medicare Fee-For-Service	25.0%
Commercial Fee-For-Service	2.0%
Commercial Manage Care	64.9%
Private Pay	.1%
Charity	2.0%

Utilization and expense assumptions are based on comparable diagnostic and treatment centers in New York State, as well as the physicians' experience in operating a private practice. The applicant has submitted physician referral letters in support of utilization projections. A sensitivity analysis was performed and illustrates all costs were covered in the first year at 70.6% of budgeted procedures or 4,235 procedures and by the third year the breakeven point drops to 64.9% of the budgeted procedures.

CAPABILITY AND FEASIBILITY

The total project cost of \$3,922,746 will be funded as follows; \$811,774 from Mohawk Valley EC proposed members, \$800,000 through equipment leases, and \$2,310,972 from two loans provided by M&T Bank at stated terms.

Working capital requirements are estimated at \$438,691, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest to finance \$219,345 at an expected interest rate of 6% with a five year term. The balance of \$219,345 is being contributed by the proposed members of Mohawk Valley EC. Presented as BFA Attachments A-C are MVEC Holdings, LLC members' personal net worth statements, 2009 certified financial summary for Faxton-St. Luke's Healthcare, and 2009 certified financial summary for St. Elizabeth Medical Center. A review of attachments A-C indicates there are sufficient liquid resources to meet the equity and working capital requirements. Presented as BFA Attachment D, is Mohawk Valley EC pro forma balance sheet that shows operations will start off with \$1,031,119 in equity.

A review of BFA Attachment B shows Faxton-St. Luke's Healthcare and subsidiaries had an excess of revenues over expenses of \$33,057,872 in 2009 and \$4,245,577 in 2008. The major portion of 2009 results came from a gain generated from the sale of a wholly owned subsidiary, Faxchil Realty and its subsidiary Centrex Clinical Laboratories, Inc., to Laboratory Corporation of American Holdings. The hospital realized a \$32,469,167 gain on the transaction which helped to bring 2009's working capital to \$74,189,327 and 2009's net assets to \$134,872,138.

A review of BFA Attachment C reveals St. Elizabeth Medical Center had an excess of revenues over expenses of \$5,740,181 in 2009 and \$1,910,563 in 2008. While the hospital had positive operating results in 2008, they had pension related charges that caused net assets to decline to \$14,247,299. During 2009 net asset increased by \$5,789,083 bring its year end balance to \$20,036,382 and at the end of 2009 working capital stood at \$21,756,371.

Mohawk Valley EC projects an operating excess of \$995,855 and \$1,455,575 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies while commercial payers are based on experience.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and approval is recommended.

From a financial perspective, contingent approval is recommended.

SUPPORTING DATA

BFA Attachment A	Personal Net Worth Statement of Proposed Members of MVEC Holdings, LLC
BFA Attachment B	Financial Summary for 2009, Faxton-St. Luke's Healthcare
BFA Attachment C	Financial Summary for 2009, St. Elizabeth Medical Center
BFA Attachment D	Pro Forma Balance Sheet of Mohawk Valley EC, LLC
BFA Attachment E	Establishment Checklist for Ambulatory Care Sites

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Balance Sheets

December 31, 2009 and 2008

<u>Assets</u>	<u>2009</u>	<u>2008</u>
Current assets:		
Cash and cash equivalents	\$ 35,711,410	3,538,805
Assets limited as to use	3,452,108	3,570,222
Investments	17,473,296	15,396,789
Patient accounts receivable, net of reserve for doubtful accounts of \$7,197,470 in 2009 and \$7,544,924 in 2008	40,777,987	39,909,502
Other receivables	3,832,674	1,364,482
Inventories	5,549,066	5,188,882
Prepaid expenses and other current assets	2,511,920	2,626,685
Due from affiliates, net	1,980,071	915,499
Net investment in direct financing lease	547,116	547,116
Estimated third-party payor settlements, net	-	4,445,345
	111,835,648	77,503,327
Interest in and amounts due from Faxton-St. Luke's Healthcare Foundation		
	6,859,042	2,802,287
Investment in and amounts due from Faxchil Realty, Inc.		
	-	4,604,696
Investment in and amounts due from SLM Medical Office Building, Inc.		
	349,389	199,307
Due from affiliates, net	1,817,792	1,906,305
Assets limited as to use	5,144,858	5,226,874
Investments	4,528,164	4,528,164
Net investment in direct financing lease	3,779,935	3,999,719
Property and equipment, net	96,851,893	85,395,077
Unamortized debt issuance costs	1,294,268	1,509,813
Intangible assets	716,116	861,054
Other assets	3,648,503	3,497,619
	236,825,608	192,034,242
Total assets	\$ 236,825,608	192,034,242

<u>Liabilities and Net Assets</u>	<u>2009</u>	<u>2008</u>
Current liabilities:		
Line of credit	\$ 2,030,000	-
Current portion of long-term debt	5,583,224	5,077,471
Current portion of capital lease obligations	3,756,113	3,331,994
Accounts payable	14,365,982	13,156,811
Accrued payroll, payroll taxes and benefits	8,570,127	8,846,849
Current portion of estimated self-insured liabilities	1,546,323	447,502
Accrued interest payable	725,359	854,229
Other current liabilities	629,212	538,716
Estimated third-party payor settlements, net	439,981	-
Total current liabilities	<u>37,646,321</u>	<u>32,253,572</u>
Long-term debt, net of current portion:		
Notes payable	11,642,070	6,631,440
Civic facility revenue bonds	36,541,481	41,336,391
Capital lease obligations	8,744,253	8,428,187
Total long-term debt, net of current portion	<u>56,927,804</u>	<u>56,396,018</u>
Unrealized loss on interest rate swaps	3,157,747	6,373,560
Estimated self-insured liabilities, net of current portion	3,440,304	2,623,357
Minority interest in Faxton Leasing, LLC	781,294	781,294
Total liabilities	<u>101,953,470</u>	<u>98,427,801</u>
Net assets:		
Unrestricted	127,851,704	87,272,767
Temporarily restricted	2,492,270	1,805,510
Permanently restricted	4,528,164	4,528,164
Total net assets	<u>134,872,138</u>	<u>93,606,441</u>
Commitments and contingencies		
Total liabilities and net assets	<u>\$ 236,825,608</u>	<u>192,034,242</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Statements of Operations and Changes in Net Assets

Years ended December 31, 2009 and 2008

	<u>2009</u>	<u>2008</u>
Unrestricted revenues, gains and other support:		
Net patient service revenue	\$ 261,722,254	249,205,909
Other revenue	6,950,804	6,128,313
Investment income, net of fees	316,834	837,528
Contributions	551,780	548,583
Net assets released from restrictions used for operations	565	1,000
	<u>269,542,237</u>	<u>256,721,333</u>
Total unrestricted revenues, gains and other support		
Expenses:		
Salaries and wages	110,584,124	103,970,224
Employee benefits	29,447,816	24,891,988
Supplies and other	101,396,611	99,280,172
Depreciation and amortization	13,348,634	12,013,602
NYS gross receipts taxes	671,614	-
Interest	3,918,905	3,714,557
Provision for bad debts	9,259,582	9,026,867
Loss (gain) on disposal of property and equipment	326,246	(3,305)
	<u>268,953,532</u>	<u>252,894,105</u>
Total expenses		
Net Income from continuing operations	<u>588,705</u>	<u>3,827,228</u>
Discontinued operations:		
Gain on operations of discontinued component	1,707,633	418,349
Gain on sale of discontinued component	30,761,534	-
	<u>32,469,167</u>	<u>418,349</u>
Gain on discontinued operations		
Excess of revenues over expenses	<u>\$ 33,057,872</u>	<u>4,245,577</u>

ST. ELIZABETH MEDICAL CENTER

Balance Sheets

December 31, 2009 and 2008

Assets	2009	2008
Current:		
Cash and cash equivalents	\$ 6,271,861	6,019,273
Current portion of assets whose use is limited	388,455	408,084
Investments	20,593,455	18,288,672
Patient accounts receivable, net of allowance for doubtful accounts of \$4,478,000 in 2009 and \$3,142,000 in 2008	23,971,266	24,254,321
Other receivables, net	560,497	664,635
Inventories of drugs and supplies	5,597,940	4,502,573
Prepaid expenses	493,919	400,078
Total current assets	57,877,393	54,537,636
Assets whose use is limited:		
Under bond indenture agreements	2,672,643	2,616,407
Restricted by donors	579,389	612,435
Property, plant, and equipment, net of accumulated depreciation and amortization	67,186,109	63,770,278
Interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	1,839,425	2,197,380
Other assets	1,196,229	1,284,668
Total assets	\$ 131,351,188	125,018,804
Liabilities and Net Assets		
Current:		
Current installments of long-term debt	\$ 1,295,000	1,170,000
Current installments of obligations under capital leases	632,634	603,594
Current installments of loans payable to Motherhouse	130,726	130,726
Accounts payable	17,761,335	15,501,699
Accrued expenses	4,874,154	5,518,828
Liabilities to third-party payors	11,427,173	11,338,911
Total current liabilities	36,121,022	34,263,758
Accrued pension liability	35,938,659	34,925,223
Long-term debt, excluding current installments	35,151,608	36,758,705
Obligations under capital leases, excluding current installments	2,273,354	2,862,930
Loans payable to Motherhouse, excluding current installments	1,830,163	1,960,889
Total liabilities	111,314,806	110,771,505
Net assets:		
Unrestricted	18,772,238	12,596,369
Temporarily restricted	887,830	1,275,616
Permanently restricted	376,314	375,314
Total net assets	20,036,382	14,247,299
Total liabilities and net assets	\$ 131,351,188	125,018,804

ST. ELIZABETH MEDICAL CENTER

Statements of Operations and Changes in Net Assets

Years ended December 31, 2009 and 2008

	2009	2008
Unrestricted revenue:		
Net patient service revenue	\$ 199,113,192	183,399,583
Other operating revenue	4,708,874	4,525,107
Unrestricted contributions	228,106	352,325
Investment income	894,163	902,659
Net assets released from restrictions for operations	23,616	17,850
Total unrestricted revenue, gains, and other support	<u>204,967,951</u>	<u>189,197,524</u>
Expenses:		
Salaries and wages	88,402,306	82,794,747
Professional fees	8,713,580	7,491,968
Employee benefits	22,263,856	20,745,352
Supplies and expenses	60,020,177	56,015,189
Utilities	2,436,372	3,129,197
Depreciation and amortization	8,161,091	8,024,001
Provision for doubtful accounts	7,276,636	6,868,172
Interest	1,953,752	2,218,335
Total expenses	<u>199,227,770</u>	<u>187,286,961</u>
Excess of revenue over expenses	5,740,181	1,910,563
Net unrealized gain (loss) on other than trading securities	261,831	(236,130)
Pension related changes other than net periodic pension cost	(827,954)	(10,662,662)
Increase in interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	25,853	336,103
Net assets released from restrictions for capital purchases	975,958	1,763,797
Increase (decrease) in unrestricted net assets	<u>6,175,869</u>	<u>(6,888,329)</u>
Temporarily restricted net assets:		
Contributions	979,969	656,900
Interest income on permanently restricted assets	17,146	20,384
Decrease in interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	(385,327)	—
Net assets released from restrictions	(999,574)	(1,781,647)
Decrease in temporarily restricted net assets	<u>(387,786)</u>	<u>(1,104,363)</u>
Increase in permanently restricted net assets – contributions	1,000	32,200
Change in net assets	5,789,083	(7,960,492)
Net assets at beginning of year	14,247,299	22,207,791
Net assets at end of year	<u>\$ 20,036,382</u>	<u>14,247,299</u>

Mohawk Valley Endoscopy Center

Pro-Forma Balance Sheet

***** Revised October 2010 *****

	Beginnning of Year	
	One	January
	2011	
	<hr/>	
ASSETS		
CURRENT ASSETS		
Cash Balances	\$	785,241
Accounts Receivable - Net	\$	-
TOTAL CURRENT ASSETS	\$	785,241
PROPERTY		
Facility Improvements	\$	1,732,750
Equipment (net of depreciation)	\$	500,000
TOTAL PROPERTY	\$	2,232,750
INTANGIBLE ASSETS		
Project Start-Up Costs & Application Fees	\$	543,446
TOTAL ASSETS	\$	3,561,437
 LIABILITIES AND NET ASSETS		
CURRENT LIABILITIES		
TOTAL CURRENT LIABILITIES	\$	-
LONG-TERM LIABILITIES		
Bank Loan for Working Capital	\$	219,345
Bank Loan for Facility Improvements & Start-Up	\$	1,810,972
Bank Loan for Equipment	\$	500,000
TOTAL LONG-TERM LIABILITIES	\$	2,530,317
TOTAL LIABILITIES	\$	2,530,317
LLC CAPITAL	\$	1,031,119
TOTAL LIABILITIES AND LLC CAPITAL	\$	3,561,437

ESTABLISHMENT CHECKLIST FOR AMBULATORY CARE SITE

APPLICATION: CON 092142-B Mohawk Valley EC, LLC

NATURE OF APPLICATION: PRIMARY CARE
 XX SPECIALTY
Endoscopy & Colonoscopy

AUSPICE: NON PROFIT
 PROPRIETARY
 PUBLIC
 XX - Limited Liability Company

AFFILIATIONS: None

UNIT COST:	<u>YEAR ONE</u>	<u>YEAR THREE</u>
OPERATING	\$ 282.04	\$ 263.71
CAPITAL	<u>\$ 114.96</u>	<u>\$ 98.89</u>
TOTAL	\$ 397.00	\$ 362.60

PAYOR SOURCE:	<u>YEAR ONE</u>
MEDICAID-FFS	2.0%
MEDICAID-MC	4.0%
MEDICARE-FFS	25.0%
COMMERCIAL-FFS	2.0%
COMMERCIAL-MC	64.9%
PRIVATE PAY	.1%
CHARITY	2.0%

**092142 Need Analysis
Mohawk Valley EC, LLC**

Project Description

Mohawk Valley EC, LLC (MVEC) requests approval to certify a single specialty ambulatory surgery center to provide endoscopy services at 116 Business Park Drive, Utica, NY.

Need Summary

MVEC requests approval to construct an ambulatory surgery center with four procedure rooms specializing in endoscopy procedures.

The seven physicians that are members of MVEC plan to perform 6,000 endoscopy procedures per year at the new facility.

The gastroenterology group (Digestive Disease Management (DDM)) reports that there is a current backlog of 5,000 to 7,000 outpatient gastroenterology procedures in their service area. In order to reduce this backlog they plan to recruit two new physicians in the next twelve months. The proposed ambulatory surgery center is considered essential to successfully recruit additional physicians and to have sufficient capacity to meet the growing demand for colorectal screenings.

Approval is recommended for a limited life of five years.

Analysis

MVEC plans to operate an ambulatory surgery center specializing in endoscopy services. The proposed center will have four operating rooms.

There are seven gastroenterologists that have committed to perform the following volume of procedures at the proposed center:

<i>Physicians</i>	<i>Annual Procedures</i>
Stanley Weiselberg	815
Norman Neslin	850
Robert Pavelock	850
Bradley Sklar	850
Richard Cherkpak	850
Brett Ghandi	850
Garth Garramone	875
Total	6,000

<i>Existing Freestanding Ambulatory Surgery Centers — Central New York</i>		
<i>Facility</i>	<i>County</i>	<i>2008 Utilization</i>
Digestive Disease Center of CNY, LLC	Onondaga	NR
Endoscopic Procedure Center	Onondaga	4,243
Harrison Center Outpatient Surgery	Onondaga	3,869
North Country Orthopedic ASC	Jefferson	1,898
Specialists' One-Day Surgery	Onondaga	9,240
Specialty Surgery Center of CNY	Onondaga	6,905
Syracuse Endoscopy Associates	Onondaga	6,133

SOURCE SPARCS

MVEC reports that three of the seven gastroenterologists are over 57 years of age. They have not been able to recruit new gastroenterologists for the last seven years. They report that they need to have an ambulatory surgery center in order to recruit new gastroenterologists to their

Source: Cornell University Program on Applied Demographics New York State and County Population Projections by Age and Sex – Preliminary Population Projections by Age and Sex, New York State and 62 counties, 2005 – 2035.

The primary population targeted for colorectal screening (ages 50 – 75) is projected to increase by 9,103 (7.4 percent) in the five county area which DDM's proposed facility will serve.

DDM estimates that to bring Chenango, Lewis and Herkimer Counties up to the Upstate New York rate of colorectal screenings, they would need to perform an additional 4,956 colorectal screenings for these three counties.

The data indicate that these three counties are currently underserved. The growth in the population aged 50-74 demonstrates that the demand for colorectal screenings will increase.

DDM reports that their physicians currently perform the following procedures at area hospitals:

<i>Hospital</i>	<i>Annual Gastroenterology Procedures</i>
Faxton-St. Luke's	7,000
St. Elizabeth's	9,000
Oneida Community Hospital	<u>5,000</u>
Total	21,000

DDM reports that there is not sufficient outpatient surgical capacity to handle the new DDM physicians and the additional surgical volume generated by them. The applicant states that Faxton-St. Luke's and St. Elizabeth Hospitals cannot accommodate additional DDM physicians without expanding their facilities. Although both hospitals have offered to build additional procedure rooms, DDM reports that the proposed ambulatory surgery center is essential to successfully recruit the new gastroenterologists.

DDM's plan is to maintain the current volume of procedures performed at the area hospitals and to expand their practice through the recruitment of additional gastroenterologists that will generate the additional procedures that will be performed at the ambulatory surgery center.

Conclusion

Approval is recommended for a limited life of five years from the date of the issuance of an operating certificate, with the following contingencies:

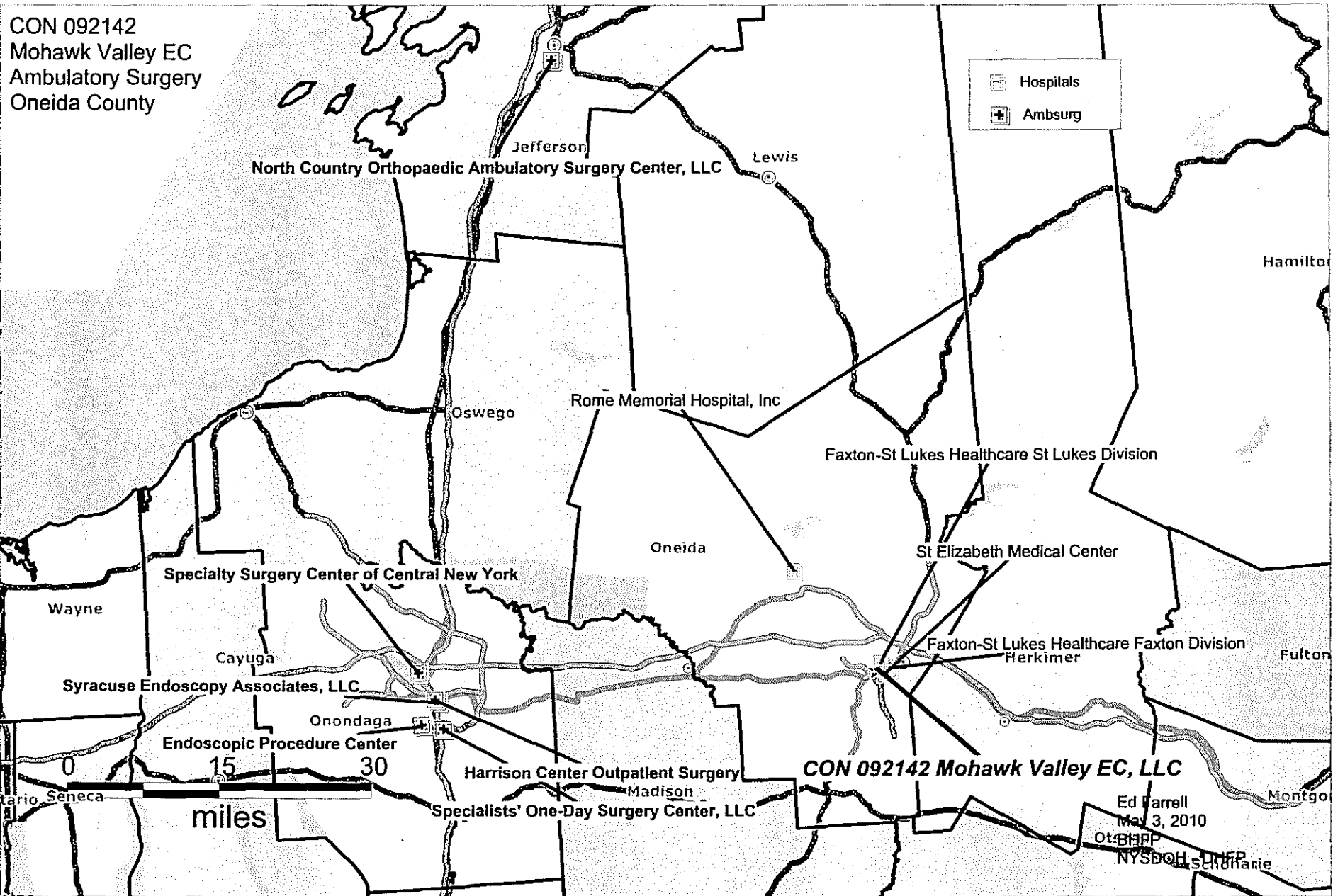
1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation.

Said reports should include:

- Data showing actual utilization including procedures;
- Data showing breakdown of visits by payor source;
- Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
- Data showing number of emergency transfers to a hospital;
- Data showing percentage of charity care provided; and
- Number of nosocomial infections recorded during the year in question.

[RNR]

CON 092142
Mohawk Valley EC
Ambulatory Surgery
Oneida County



Ed Farrell
May 3, 2010
Ot: BHP
NYSDOH - LHP
NYSDOH - Schottarie



Timothy Bobo
<tjbobo@cnyhsa.com>
11/08/2010 04:45 PM

To "Jeffrey R. Rothman" <jrr03@health.state.ny.us>
cc
Subject Fwd: #092142

Jeff: I'm confirming our original "no recommendation" (see below e-mail) on this CON, as revised:

Project Number: 092142 **Level:** Full Review

Purpose: Establishment and Construction **County Name:** ONEIDA

Facility Name: Mohawk Valley EC, LLC

Establish/construct a single-specialty ASC providing endoscopy, at 116 Business Park Dr., Utica;

Rev: 10/20/10 - Add Faxton St. Luke's Healthcare and St. Elizabeth Medical Center to ownership, each with 20% interest; increase in Total Project Costs

Date: Thu, 15 Jul 2010 11:09:06 -0400

To: Don Peal

From: Timothy Bobo <tjbobo@cnyhsa.com>

Subject: #092142

Don: confirming CNYHSA action:

#092142 Mohawk Valley EC, LLC
no recommendation

amb surg center, endoscopy services

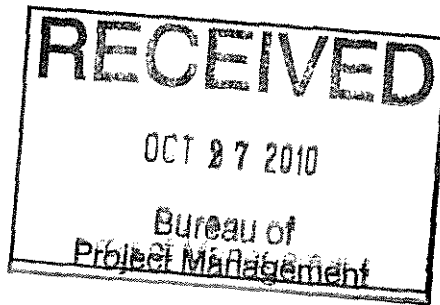
Timothy Bobo, Executive Director
Central New York Health Systems Agency
5700 Commons Park Drive
East Syracuse, NY 13057

(315) 472-8099; 472-8033(FAX)

<http://www.cnyhsa.com/>

Timothy Bobo, Executive Director
Central New York Health Systems Agency
5700 Commons Park Drive
East Syracuse, NY 13057
(315) 472-8099; 472-8033(FAX)

<http://www.cnyhsa.com/>



October 25, 2010

Mr. Jeffrey Rothman, Director
Bureau of Project Management
New York State Department of Health
Hedley Park Place, 6th Floor
433 River Street
Troy, NY 12180-2299

RE: CON# 092142 – Mohawk Valley EC, LLC

Dear Mr. Rothman:

We are responding to the questions raised by the Bureau of Financial Analysis regarding the above referenced Certificate of Need application.

1. **Please provide 2009 Certified Statements for Faxton-St. Luke's Healthcare and Subsidiaries. If applicable, address the reason(s) for the losses and steps implemented to improve operations.**
Statements are attached.

2. **Please provide 2009 Certified Statements for St. Elizabeth Medical Center. If applicable, address the reason(s) for the losses and steps implemented to improve operations.**
Statements are attached.

3. **Please provide affidavits from the members of the applicant to fund the balloon payment on the proposed mortgage should terms acceptable to the Department of Health be unavailable at the time of refinancing:**

- The affidavits from the following members should commitment to using their personal assets for this purpose: Stanley Weiselberg, M.D., Norman R. Neslin, M.D., Robert R. Pavelock, M.D., Bradley F. Sklar, M.D., Richard Cherpak, M.D., Brett Gandhi, M.D., Garth J. Garramone, D.O.

Affidavits are attached.

- The affidavits from Faxton-St. Luke's Healthcare and St. Elizabeth Medical Center can commit using corporate resources.

Affidavits are attached.

If any further information is required, please contact me at your earliest convenience at (518) 583-4900. Thank you for your assistance with this application.

Sincerely,



Ann M. Gormley
Consultant

CC: Mr. William Lindenman
Bureau of Financial Analysis





STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

October 22, 2010

Ms. Ann Gormely
Consultant
Empire Health Advisors
60 Railroad Place, Suite 101
Saratoga Springs, NY 12866

Re: 092142 Mohawk Valley EC, LLC
(Oneida County)
Establish/construct a single-specialty
ASC providing endoscopy at 116 Business Park Drive
Utica, NY. **Revised:** October 20, 2010 – Add Faxton St. Luke's
Healthcare and St. Elizabeth Medical Center to ownership
Each with 20% interest; increase in Total Project Costs.

Dear Ms. Gormley:

Review of the above application has revealed the need for the additional information requested in the enclosure from the Bureau of Financial Analysis. In preparing answers to the questions, please repeat each question and then provide the answer. Please submit your response within 5 days of the date of this letter in accordance with 10 NYCRR 710.3(a), as follows:

1. One copy to the Bureau of Financial Analysis, New York State Department of Health, Hedley Park Place, 6th Floor, 433 River Street, Troy, New York 12180-2299.
2. An original and eight copies of your response to Jeffrey Rothman, Director, Bureau of Project Management, New York State Department of Health, Hedley Park Place, 6th Floor, 433 River Street, Troy, New York 12180-2299.

Processing of your application by the Bureau of Financial Analysis cannot be completed until the information is received and reviewed. Also, if this project requires review by the State Hospital Review and Planning Council, such review may have to be delayed if the requested information is not received promptly (particularly if the Bureau of Financial Analysis does not receive a separate copy). Accordingly, you are encouraged to submit the response at your earliest opportunity. In this regard, be advised that a single faxed response to this request does not constitute a full and complete response.

If you have any questions on the information being requested, please contact the individual identified on the enclosure.

Sincerely,

Robert G. Schmidt, MHP
Acting Director, CON Review Group
Division of Health Facility Planning

Enclosure

092142 - Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center
(Oneida County)

The following questions have been prepared by the Bureau of Financial Analysis.

If additional information is needed, please contact Bill Lindenman at (518) 402-0953.

1. Please provide 2009 Certified Financial Statements for Faxton-St. Luke's Healthcare and Subsidiaries. If applicable, address the reason(s) for the losses and steps implemented to improve operations.
2. Please provide 2009 Certified Financial Statements for St. Elizabeth Medical Center. If applicable, address the reason(s) for the losses and steps implemented to improve operations.
3. Please provide affidavits from the members of the applicant to fund the balloon payment on the proposed mortgage should terms acceptable to the Department of Health be unavailable at the time of refinancing:
 - The affidavits from the following members should commitment to using their personal assets for this purpose:

Stanley P. Weiselberg, M.D.
Norman R. Neslin, M.D.
Robert R. Pavelock, M.D.
Bradley F. Sklar, M.D.
Richard Cherpak, M.D.
Brett Gandhi, M.D.
Garth J. Garramone, D.O.
 - The affidavits from Faxton-St. Luke's Healthcare and St. Elizabeth Medical Center can commit to using corporate resources

**FAXTON-ST. LUKE'S HEALTHCARE
AND SUBSIDIARIES**

**Consolidated Financial Statements
(Governmental Filing Requirements)**

December 31, 2009 and 2008

INDEPENDENT AUDITOR'S REPORT

The Board of Directors
Faxton-St. Luke's Healthcare:

We have audited the accompanying consolidated balance sheets of Faxton-St. Luke's Healthcare and Subsidiaries as of December 31, 2009 and 2008, and the related consolidated statements of operations and changes in net assets and cash flows for the years then ended. These consolidated financial statements are the responsibility of the management of Faxton-St. Luke's Healthcare. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Faxton-St. Luke's Healthcare and Subsidiaries as of December 31, 2009 and 2008, and the consolidated results of their operations and changes in net assets and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The consolidated financial statements referred to above were prepared primarily to meet credit analysis and governmental filing requirements. Such financial statements are not intended to be general purpose financial statements (see note to consolidated financial statements 1(b)).

This report is intended solely for the information and use of the board of directors and management of Faxton-St. Luke's Healthcare and subsidiaries, the New York State Department of Health and other Offices and Agencies of the State of New York and selected financial institutions and is not intended to be and should not be used by anyone other than these specified parties.

Fust Charles Chambers LLP

June 1, 2010

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Balance Sheets

December 31, 2009 and 2008

Assets	2009	2008
Current assets:		
Cash and cash equivalents	\$ 35,711,410	3,538,805
Assets limited as to use	3,452,108	3,570,222
Investments	17,473,296	15,396,789
Patient accounts receivable, net of reserve for doubtful accounts of \$7,197,470 in 2009 and \$7,544,924 in 2008	40,777,987	39,909,502
Other receivables	3,832,674	1,364,482
Inventories	5,549,066	5,188,882
Prepaid expenses and other current assets	2,511,920	2,626,685
Due from affiliates, net	1,980,071	915,499
Net investment in direct financing lease	547,116	547,116
Estimated third-party payor settlements, net	-	4,445,345
	<hr/>	<hr/>
Total current assets	111,835,648	77,503,327
Interest in and amounts due from Faxton-St. Luke's Healthcare Foundation	6,859,042	2,802,287
Investment in and amounts due from Faxchil Realty, Inc.	-	4,604,696
Investment in and amounts due from SLM Medical Office Building, Inc.	349,389	199,307
Due from affiliates, net	1,817,792	1,906,305
Assets limited as to use	5,144,858	5,226,874
Investments	4,528,164	4,528,164
Net investment in direct financing lease	3,779,935	3,999,719
Property and equipment, net	96,851,893	85,395,077
Unamortized debt issuance costs	1,294,268	1,509,813
Intangible assets	716,116	861,054
Other assets	3,648,503	3,497,619
	<hr/>	<hr/>
Total assets	\$ <u>236,825,608</u>	<u>192,034,242</u>

<u>Liabilities and Net Assets</u>	<u>2009</u>	<u>2008</u>
Current liabilities:		
Line of credit	\$ 2,030,000	-
Current portion of long-term debt	5,583,224	5,077,471
Current portion of capital lease obligations	3,756,113	3,331,994
Accounts payable	14,365,982	13,156,811
Accrued payroll, payroll taxes and benefits	8,570,127	8,846,849
Current portion of estimated self-insured liabilities	1,546,323	447,502
Accrued interest payable	725,359	854,229
Other current liabilities	629,212	538,716
Estimated third-party payor settlements, net	439,981	-
Total current liabilities	<u>37,646,321</u>	<u>32,253,572</u>
Long-term debt, net of current portion:		
Notes payable	11,642,070	6,631,440
Civic facility revenue bonds	36,541,481	41,336,391
Capital lease obligations	8,744,253	8,428,187
Total long-term debt, net of current portion	<u>56,927,804</u>	<u>56,396,018</u>
Unrealized loss on interest rate swaps	3,157,747	6,373,560
Estimated self-insured liabilities, net of current portion	3,440,304	2,623,357
Minority interest in Faxton Leasing, LLC	781,294	781,294
Total liabilities	<u>101,953,470</u>	<u>98,427,801</u>
Net assets:		
Unrestricted	127,851,704	87,272,767
Temporarily restricted	2,492,270	1,805,510
Permanently restricted	4,528,164	4,528,164
Total net assets	<u>134,872,138</u>	<u>93,606,441</u>
Commitments and contingencies (notes 6, 8 and 11)		
Total liabilities and net assets	<u>\$ 236,825,608</u>	<u>192,034,242</u>

See accompanying notes to consolidated financial statements.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Statements of Operations and Changes in Net Assets

Years ended December 31, 2009 and 2008

	<u>2009</u>	<u>2008</u>
Unrestricted revenues, gains and other support:		
Net patient service revenue	\$ 261,722,254	249,205,909
Other revenue	6,950,804	6,128,313
Investment income, net of fees	316,834	837,528
Contributions	551,780	548,583
Net assets released from restrictions used for operations	<u>565</u>	<u>1,000</u>
Total unrestricted revenues, gains and other support	<u>269,542,237</u>	<u>256,721,333</u>
Expenses:		
Salaries and wages	110,584,124	103,970,224
Employee benefits	29,447,816	24,891,988
Supplies and other	101,396,611	99,280,172
Depreciation and amortization	13,348,634	12,013,602
NYS gross receipts taxes	671,614	-
Interest	3,918,905	3,714,557
Provision for bad debts	9,259,582	9,026,867
Loss (gain) on disposal of property and equipment	<u>326,246</u>	<u>(3,305)</u>
Total expenses	<u>268,953,532</u>	<u>252,894,105</u>
Net Income from continuing operations	<u>588,705</u>	<u>3,827,228</u>
Discontinued operations:		
Gain on operations of discontinued component	1,707,633	418,349
Gain on sale of discontinued component	<u>30,761,534</u>	<u>-</u>
Gain on discontinued operations	<u>32,469,167</u>	<u>418,349</u>
Excess of revenues over expenses	<u>\$ 33,057,872</u>	<u>4,245,577</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Statements of Operations and Changes in Net Assets, Continued

Years ended December 31, 2009 and 2008

	<u>2009</u>	<u>2008</u>
Unrestricted net assets:		
Excess of revenues over expenses	\$ 33,057,872	4,245,577
Change in fair value of interest rate swaps	3,215,813	(4,219,720)
Change in interest in unrestricted net assets of Foundation	194,280	(1,394,965)
Contributions used for capital acquisitions	541,154	543,430
Change in net unrealized gains and losses on investments	<u>3,569,818</u>	<u>(7,256,885)</u>
Increase (decrease) in unrestricted net assets	<u>40,578,937</u>	<u>(8,082,563)</u>
Temporarily restricted net assets:		
Income on investments	508	852
Change in interest in temporarily restricted net assets of Foundation	686,817	468,782
Net assets released from restrictions	<u>(565)</u>	<u>(1,000)</u>
Increase in temporarily restricted net assets	<u>686,760</u>	<u>468,634</u>
Total increase (decrease) in net assets	41,265,697	(7,613,929)
Net assets at beginning of year	<u>93,606,441</u>	<u>101,220,370</u>
Net assets at end of year	<u>\$ 134,872,138</u>	<u>93,606,441</u>

See accompanying notes to consolidated financial statements.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Statements of Cash Flows

Years ended December 31, 2009 and 2008

	<u>2009</u>	<u>2008</u>
Cash flows from operating activities:		
Change in net assets	\$ 41,265,697	(7,613,929)
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation and amortization	13,348,634	12,013,602
Provision for bad debts	9,259,582	9,026,867
Change in interest in net assets of Faxton-St. Luke's Healthcare Foundation	(881,097)	926,183
Change in net unrealized gains and losses on investments	(3,569,818)	7,256,885
Change in fair value of interest rate swap	(3,215,813)	4,219,720
Amortization of unearned lease income	(327,332)	(343,037)
Net realized loss on sale of investments	306,431	286,644
Loss (gain) on disposition of property and equipment	326,246	(3,305)
Loss (gain) in earnings of subsidiaries	(186,475)	250,360
Gain on operations of discontinued component	(1,707,633)	(418,349)
Gain on sale of discontinued component	(30,761,534)	-
Contributions for capital acquisitions	(541,154)	(543,430)
Changes in operating assets and liabilities:		
Receivables	(12,596,259)	(13,657,358)
Inventories, prepaid expenses and other current assets	(245,419)	(119,582)
Due from affiliates, net	2,225,767	2,863,827
Accounts payable, accrued expenses and other liabilities	894,075	1,834,495
Estimated self-insured liabilities	1,915,768	(664,255)
Estimated third-party payor settlements	4,885,326	(1,767,634)
Net cash provided by operating activities	<u>20,394,992</u>	<u>13,547,704</u>
Cash flows from investing activities:		
Purchases of property and equipment	(17,251,239)	(10,475,008)
Proceeds from sale of property and equipment	440,681	58,895
Proceeds (purchases) from sale of investments, net	1,186,880	(2,365,809)
Gain on sale of discontinued component	30,761,534	-
Increase in other assets	(179,646)	(597,514)
Net decrease in assets limited as to use	<u>200,130</u>	<u>976,490</u>
Net cash provided by (used in) investing activities	<u>15,158,340</u>	<u>(12,402,946)</u>
Cash flows from financing activities:		
Proceeds from short-term borrowings, net	2,030,000	-
Proceeds from long-term debt	2,300,000	1,750,000
Principal payments on long-term debt and capitalized lease obligations	(8,798,997)	(7,692,776)
Minimum direct financing lease payments received	547,116	547,116
Contributions for capital acquisitions	541,154	543,430
Net cash used in financing activities	<u>(3,380,727)</u>	<u>(4,852,230)</u>
Increase (decrease) in cash and cash equivalents	32,172,605	(3,707,472)
Cash and cash equivalents at beginning of year	<u>3,538,805</u>	<u>7,246,277</u>
Cash and cash equivalents at end of year	<u>\$ 35,711,410</u>	<u>3,538,805</u>

See accompanying notes to consolidated financial statements.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

December 31, 2009 and 2008

(1) Description of Organization and Summary of Significant Accounting Policies

(a) Organization

Faxton-St. Luke's Healthcare (Healthcare), located in Utica, New York, is a not-for-profit healthcare delivery system providing inpatient, outpatient, emergency care, cancer treatment, rehabilitation, dialysis, maternity, child care, long term care, surgical, psychiatric and community services to residents of the Mohawk Valley Region. Admitting physicians are primarily practitioners in the local area. Mohawk Valley Network, Inc. (MVN), a not-for-profit corporation, is the sole corporate member of Healthcare and various other organizations involved in providing health care services to the Mohawk Valley Region.

(b) Principles of Presentation

The accompanying consolidated financial statements were prepared primarily to meet credit analysis and governmental filing requirements, and are not intended to be general purpose financial statements of a primary reporting entity. Accordingly, such statements do not include the assets, liabilities or results of operations of all subsidiaries or controlled corporations as such terms are defined under generally accepted accounting principles for consolidated financial statements. Healthcare issues consolidated primary reporting entity financial statements.

The accompanying consolidated financial statements include the accounts of Healthcare and its 55.5% owned subsidiary, Faxton Leasing, LLC (Leasing). Faxton-St. Luke's Healthcare Foundation (Foundation), of which Healthcare is the sole member, SLM Corporation, whose stock is owned by a trust, of which Healthcare is the sole beneficiary, and Faxchil Realty, Inc. (Faxchil), a wholly owned for-profit subsidiary, are included on the equity method of accounting. Centrex Clinical Laboratories, Inc. (Centrex) is the wholly owned subsidiary of Faxchil. On December 9, 2009, Healthcare sold Faxchil (see note 2). St. Luke's Home Residential Health Care Facility, Inc. (Home), in which Healthcare has a sole financial interest at dissolution, is excluded from these consolidated financial statements. All significant intercompany transactions and balances with Leasing have been eliminated in consolidation.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(b) Principles of Presentation, Continued

Leasing, a 55.5% owned subsidiary, leases property and equipment to Healthcare for radiation therapy services. The Foundation is a not-for-profit, tax-exempt corporation that carries out fund raising activities which benefit Healthcare and the Home. Faxchil is a for-profit corporation that manages real property. Centrex is a for-profit corporation that provides clinical laboratory services to Healthcare, physicians and other entities.

(c) Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The current economic environment has increased the degree of uncertainty inherent in those estimates and assumptions.

(d) Collective Bargaining Agreements

At December 31, 2009, Healthcare has approximately 30% of its employees working under collective bargaining agreements.

(e) Cash and Cash Equivalents

Cash and cash equivalents include certain investments in highly liquid debt instruments with original maturity of three months or less, excluding temporary investments included in assets limited as to use and long-term investments.

(f) Investments

Investments in equity securities with readily determinable fair values and all investments in debt securities are measured at fair value in the balance sheets. The insurance group fixed annuity contracts (Guaranteed Investment Contracts) are valued at contract value, which is considered the best representation of fair value. Investment income or loss (including realized gains and losses on investments, interest and dividends) is included in the excess of revenues over expenses unless the income or loss is restricted by donor or law. Unrealized gains and losses on investments are excluded from the excess of revenues over expenses since none of the investments are classified as trading securities.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(f) Investments, Continued

The Hospital invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market, and credit risks. Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect the amounts reported in the balance sheet.

(g) Assets Limited as to Use

Assets limited as to use represent assets held by trustees under indenture agreements and unexpended debt proceeds for the purchase of equipment. Amounts required to meet current liabilities are classified in the balance sheets as current assets.

(h) Inventories

Inventories are stated at the lower of average cost or market.

(i) Property and Equipment

Property and equipment are recorded at cost. Depreciation is provided over the estimated useful life of each class of depreciable asset and is computed using the straight-line method. Equipment under capital leases and leasehold improvements are amortized on the straight-line method over the lesser of the lease term or the estimated useful life of the asset. Amortization of equipment under capital leases and leasehold improvements is included in depreciation expense.

Interest cost incurred on borrowed funds during the construction of capital assets is capitalized as a component of the cost of acquiring those assets. Net interest cost capitalized amounted to approximately \$97,000 in 2009 and \$157,000 in 2008.

Gifts of long-lived assets, such as land, buildings or equipment are reported as unrestricted support and are excluded from the excess of revenues over expenses, unless explicit donor stipulations specify how the donated asset must be used. Gifts of long-lived assets with explicit restrictions that specify how the assets are to be used and gifts of cash or other assets that must be used to acquire long-lived assets are reported as restricted support. Absent explicit donor stipulations about how long those long-lived assets must be maintained, expirations of donor restrictions are reported when the donated or acquired long-lived assets are placed in service.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(j) Unamortized Debt Issuance Costs

Debt issuance costs are amortized using the straight-line method, which approximates the effective interest method, over the terms of the related debt. Amortization expense amounted to approximately \$216,000 for 2009 and \$207,000 for 2008. Amortization expense will be approximately \$216,000 for the next three years, approximately \$142,000 for year four and \$84,000 for year five.

(k) Intangible Assets

Intangible assets consisting of purchased goodwill, customer lists and a covenant not to compete are being amortized using the straight-line method primarily over fifteen years.

(l) Other Assets

Other assets consist primarily of an investment held with an insurance company and receivables from other health care providers.

(m) Temporarily Restricted Net Assets

Temporarily restricted net assets are those whose use has been limited by donors to a specific time period or purpose.

(n) Permanently Restricted Net Assets (Endowment Funds)

The Hospital maintains various donor-restricted and board-designated funds whose purpose is to provide long-term support for its charitable programs. In classifying such funds for financial statement purposes as either permanently restricted, temporarily restricted or unrestricted net assets, the Board of Directors looks to the explicit directions of the donor where applicable and the provisions of the laws of the State of New York. To constitute an endowment under New York State law, the restriction must arise from a clearly expressed donor limitation, not a limitation from within the beneficiary organization. The Board has determined that, absent donor stipulations to the contrary, the provisions of New York State law do not impose either a permanent or temporary restriction on the income or capital appreciation derived from the original gift. Therefore, all income and appreciation derived from the original gift are transferred to unrestricted net assets absent any restrictions on the use made by the donor.

The Hospital utilizes an investment strategy that emphasizes preservation of principal and total return consistent with prudent levels of risk. Investments are allocated over a diversified portfolio of multiple asset classes of domestic and international equities and bonds.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(n) Permanently Restricted Net Assets (Endowment Funds), Continued

Under New York State law, the historic dollar value of an endowment fund must be preserved. The historic dollar value is defined as the aggregate fair value in dollars of: an endowment fund at the time it becomes an endowment fund, each subsequent donation to the fund at the time it is made; and each accumulation made pursuant to a direction in applicable gift instrument at the time an accumulation is added to the fund. Certain of the Hospital's donor restricted endowments have experienced losses due to market fluctuations and the continuing requirements of funded programs. Generally accepted accounting principles requires that such excess losses be absorbed by the unrestricted net assets of the Hospital and the future gains be allocated to unrestricted net assets until such losses have been restored. Aggregate, cumulative losses absorbed by the unrestricted net assets at December 31, 2009 and 2008, amounted to approximately \$552,000 and \$1,235,000, respectively. Permanently restricted net assets consist of endowment funds of \$4,528,164 at December 31, 2009 and 2008, and are included in long-term investments in the consolidated balance sheets.

(o) Net Patient Service Revenue and Patient Accounts Receivable

Healthcare has agreements with third-party payors that provide for payments to the various organizations within its healthcare delivery system at amounts different from their established rates. Payment arrangements include prospectively determined rates per discharge, cost-based reimbursement, discounted charges, per diem payments and fee-for-service payments. Net patient service revenue and the related patient accounts receivable are reported at the estimated net realizable amounts from patients, third-party payors and others for services rendered, including estimated retroactive adjustments due to future audits, reviews and investigations. Retroactive adjustments are included in the recognition of revenue on an estimated basis in the period the related services are rendered and adjusted in future periods as adjustments become known or as years are no longer subject to such audits, reviews and investigations.

An allowance for doubtful accounts receivable is estimated by management based on periodic reviews of the collectibility of accounts receivable considering historical experience and prevailing economic conditions.

Revenue from the Medicare and Medicaid programs accounted for approximately 51% and 52% of Healthcare's net patient service revenue for 2009 and 2008, respectively. Laws and regulations governing the Medicare and Medicaid programs are extremely complex and subject to interpretation. As a result, there is at least a reasonable possibility that recorded estimates will change by a material amount in the near term. Patient service revenue decreased by approximately \$690,000 in 2009 and by approximately \$248,000 in 2008 related to either settlement of prior year issues or changes in estimates associated with third-party issues.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(o) Net Patient Service Revenue and Patient Accounts Receivable, Continued

Healthcare grants unsecured credit to its patients, most of whom are local residents and are insured under third-party payor agreements. The mix of receivables from patients and third-party payors at December 31 was as follows:

	<u>2009</u>	<u>2008</u>
Medicare	24%	27%
Medicaid	13%	11%
Private payors	38%	35%
Insurance and all others	<u>25%</u>	<u>27%</u>
	<u>100%</u>	<u>100%</u>

(p) Charity Care

Healthcare provides care to patients who meet certain criteria under its charity care policy without charge or at amounts less than established rates. Because Healthcare does not pursue collection of such amounts, they are not reported as net patient service revenue. Charity care charges foregone, based on established rates, were approximately \$1,399,000 and \$1,724,000 for 2009 and 2008, respectively.

(q) Contributions

Unconditional promises to give cash and other assets are reported at fair value at the date the promise is received. Conditional promises to give and indications of intentions to give are reported at fair value at the date the gift is received. Contributions are reported as either temporarily or permanently restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated time restriction ends or purpose restriction is accomplished, temporarily restricted net assets are reclassified as unrestricted net assets and reported in the statements of operations and changes in net assets as net assets released from restrictions. Donor restricted contributions whose restrictions are met within the same year as received are reported as unrestricted contributions in the consolidated statements of operations and changes in net assets.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(r) Excess of Revenues over Expenses

The consolidated statements of operations and changes in net assets include excess of revenues over expenses. Changes in unrestricted net assets which are excluded from excess of revenues over expenses, consistent with industry practice, include changes in unrealized gains and losses on investments other than trading securities, permanent transfers of assets to and from affiliates for other than goods and services and contributions of long-lived assets (including assets acquired using contributions which by donor restriction were to be used for the purpose of acquiring such assets).

(s) Income Taxes

Healthcare and the Foundation are not-for-profit corporations and have been recognized as tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue Code. Leasing is a for-profit limited liability corporation.

As of December 31, 2009, Healthcare did not have any unrecognized tax benefits or any related accrued interest or penalties. The tax years open to examination by federal and New York State taxing authorities are 2006 through 2009.

(t) Concentration of Credit Risk

Healthcare maintained cash and cash equivalent balances above FDIC insurance limits at December 31, 2009.

(u) Reclassifications

Certain 2008 amounts have been reclassified to conform with the 2009 financial statement presentation.

(v) Subsequent Events

Subsequent events have been evaluated through June 1, 2010, which is the date financial statements were issued.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(2) Discontinued Operations

On December 9, 2009, Healthcare sold its wholly owned, for-profit subsidiary, Faxchil Realty, Inc. (Faxchil), including Faxchil's wholly owned, for-profit subsidiary, Centrex Clinical Laboratories, Inc. (Centrex), to Laboratory Corporation of America Holdings for \$42,000,000 with certain assets and liabilities assumed by Healthcare, plus an additional earn-out payment if certain revenue targets are achieved. Healthcare recorded a gain in connection with the sale of approximately \$30,762,000.

Faxchil is a holding company that managed real property prior to 2009 and Centrex provides clinical laboratory services to health care providers. In connection with the disposal of this business, Healthcare has classified the results of this business as discontinued operations for 2009 and 2008. Healthcare previously recorded Faxchil on the equity method.

The operating results of Faxchil and Centrex classified as discontinued operations are as follows:

	<u>2009</u>	<u>2008</u>
Sales	\$ 42,885,179	42,203,205
Income before taxes	2,846,055	598,458
Income tax provision	1,138,422	180,109
Income from operations of discontinued operations, net of tax	1,707,633	418,349

The above income from operations of \$418,349 in 2008 was included as equity in earnings of affiliates in other revenue on the 2008 consolidated statement of operations and changes in net assets.

The assets and liabilities related to discontinued operations as of December 31, 2008 were as follows and were included as the net investment in and amounts due from Faxchil Realty, Inc. in the 2008 consolidated balance sheet:

Total assets	\$ 15,744,573
Total liabilities	<u>15,948,083</u>
Net deficiency	\$ <u>(203,510)</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(3) Intangible Assets

Intangible assets at December 31 were:

	<u>2009</u>	<u>2008</u>
Goodwill	\$ 1,105,874	1,105,874
Accumulated amortization	(637,787)	(562,515)
Customer lists	945,000	945,000
Accumulated amortization	(719,750)	(656,750)
Covenant not to compete	100,000	100,000
Accumulated amortization	<u>(77,221)</u>	<u>(70,555)</u>
	<u>\$ 716,116</u>	<u>861,054</u>

Amortization expense for the years ended December 31, 2009 and 2008 was approximately \$145,000. Amortization expense for the customer lists and covenant not to compete will be approximately \$70,000 for the next three years, approximately \$31,000 for year four and approximately \$3,000 for year five. Goodwill will be assessed for impairment in the future in accordance with the Goodwill topic of the FASB Accounting Standards Codification.

(4) Investments

Assets Limited as to Use

At December 31, assets limited as to use, at fair value, are comprised of the following:

	<u>2009</u>	<u>2008</u>
Cash and cash equivalents	\$ 2,988,116	5,710,956
Cash and cash equivalents - in escrow	3,000,000	-
Guaranteed Investments Contracts	2,167,249	2,750,827
Mutual funds	441,601	335,313
	<u>8,596,966</u>	<u>8,797,096</u>
Classified as current assets	<u>3,452,108</u>	<u>3,570,222</u>
Classified as non-current assets	<u>\$ 5,144,858</u>	<u>5,226,874</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(4) Investments, Continued

Investments

At December 31, investments, at fair value, are comprised of the following:

	<u>2009</u>	<u>2008</u>
Cash and cash equivalents	\$ 35,185,923	2,350,895
Mutual funds	11,155,742	16,232,150
Common stock	2,963,449	2,532,070
Corporate obligations	7,327,049	-
Real estate investment trust	<u>536,920</u>	<u>849,618</u>
	<u>\$ 57,169,083</u>	<u>21,964,733</u>

The above amounts are included in the accompanying financial statements as follows:

	<u>2009</u>	<u>2008</u>
Investments - current assets	\$ 17,473,296	15,396,789
Cash and cash equivalents	35,167,623	2,039,780
Long-term investments	<u>4,528,164</u>	<u>4,528,164</u>
	<u>\$ 57,169,083</u>	<u>21,964,733</u>

Investment income and gains (losses) on unrestricted investments are comprised of the following for the years ended December 31:

	<u>2009</u>	<u>2008</u>
Investment income:		
Interest income and dividends, net of fees	\$ 623,265	1,124,172
Realized gains (losses)	<u>(306,431)</u>	<u>(286,644)</u>
	316,834	837,528
Change in net unrealized gains and losses on investments	<u>3,569,818</u>	<u>(7,256,885)</u>
	<u>\$ 3,886,652</u>	<u>(6,419,357)</u>

The Hospital reviews investments for other-than-temporary impairment whenever the fair value of an investment is less than amortized cost and evidence indicates that an investment's carrying amount is not recoverable within a reasonable period of time. In the evaluation of whether an impairment is other-than-temporary, the Hospital considers the reasons for the impairment, its ability and intent to hold the investment until the market price recovers or the investment matures, compliance with its investment policy, the severity and duration of the impairment, and expected future performance.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(4) Investments, Continued

The Hospital's investments in marketable equity securities and mutual funds consist of investments diversified in several different industries. The Hospital evaluated the near-term prospects of the issuer in relation to the severity and duration of impairment. Based upon the evaluation and the Hospital's ability and intent to hold the securities for a reasonable period of time sufficient for a forecasted recovery of fair value, the Hospital does not consider the securities in an unrealized loss position to be other-than-temporarily impaired at December 31, 2009 and 2008.

The Hospital and the Foundation have a commingled investment portfolio. At December 31, 2009 and 2008, the commingled investment portfolio has mutual funds, common stocks and real estate investment trust with temporary net unrealized losses of \$1,558,190, \$170,114 and \$635,257, respectively, and an aggregate fair market value of \$6,838,072, \$938,677 and \$1,091,085. The following table presents the gross unrealized losses and fair value of the Hospital's investments with unrealized losses that are not deemed to be other-than-temporarily impaired, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position at December 31, 2009 and 2008:

<u>Securities</u>	2009					
	<u>Less than Twelve Months</u>		<u>Twelve Months or Greater</u>		<u>Total</u>	
	<u>Fair value</u>	<u>Unrealized losses</u>	<u>Fair value</u>	<u>Unrealized losses</u>	<u>Fair value</u>	<u>Unrealized losses</u>
Mutual funds	\$ 1,359,034	(18,383)	5,479,038	(1,539,807)	6,838,072	(1,558,190)
Common stocks	180,780	(12,713)	757,897	(157,401)	938,677	(170,114)
Real estate investment trust	-	-	1,091,085	(635,257)	1,091,085	(635,257)
	<u>\$ 1,539,814</u>	<u>(31,096)</u>	<u>7,328,020</u>	<u>(2,332,465)</u>	<u>8,867,834</u>	<u>(2,363,561)</u>
	2008					
<u>Securities</u>	<u>Less than Twelve Months</u>		<u>Twelve Months or Greater</u>		<u>Total</u>	
	<u>Fair value</u>	<u>Unrealized losses</u>	<u>Fair value</u>	<u>Unrealized losses</u>	<u>Fair value</u>	<u>Unrealized losses</u>
Mutual funds	\$ 15,978,853	(4,173,943)	-	-	15,978,853	(4,173,943)
Common stocks	1,426,433	(575,966)	623,721	(271,735)	2,050,154	(847,701)
Real estate investment trust	849,618	(241,467)	-	-	849,618	(241,467)
	<u>\$ 18,254,904</u>	<u>(4,991,376)</u>	<u>623,721</u>	<u>(271,735)</u>	<u>18,878,625</u>	<u>(5,263,111)</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(5) Other Revenue

Other revenue consists of the following for the years ended December 31:

	<u>2009</u>	<u>2008</u>
Rent	\$ 831,027	744,881
Affiliate sold services	613,909	586,899
Other interest income	371,319	445,553
Mohawk Valley Heart Institute	1,781,149	1,859,782
Equity in earnings (losses) of affiliates	186,475	(250,360)
New Hartford Scanner Partnership income	743,092	735,416
Grant revenue	483,219	505,971
EMS education classes	489,161	467,045
CMIC Partnership income	191,737	41,718
School of Radiology tuition	230,119	187,277
VHA partnership equity earnings	301,975	294,294
Managed care incentive income	200,024	241,790
Other	<u>527,598</u>	<u>268,047</u>
	<u>\$ 6,950,804</u>	<u>6,128,313</u>

(6) Property and Equipment

Property and equipment is comprised of the following at December 31:

	<u>2009</u>	<u>2008</u>
Land and improvements	\$ 5,651,010	5,507,624
Buildings	104,239,844	97,342,016
Fixed equipment	34,781,275	34,071,004
Movable equipment	70,920,414	57,765,698
Equipment under capitalized leases	<u>20,484,641</u>	<u>17,276,870</u>
	236,077,184	211,963,212
Less accumulated depreciation	<u>145,477,503</u>	<u>134,199,988</u>
	90,599,681	77,763,224
Construction-in-progress	<u>6,252,212</u>	<u>7,631,853</u>
Property and equipment, net	<u>\$ 96,851,893</u>	<u>85,395,077</u>

Depreciation expense amounted to approximately \$13.0 million and \$11.7 million for the years ended December 31, 2009 and 2008, respectively. At December 31, 2009, the balance remaining on construction contract commitments approximated \$2.8 million.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(7) Direct Financing Lease

In 2001, Healthcare completed construction of a medical office building with a cost of approximately \$5 million on land owned by an affiliate of Slocum-Dickson Medical Group, P.C. (SDMG). The building is leased to SDMG under a direct financing lease for minimum lease payments of \$45,393 per month through 2022. Healthcare financed 80% of the building cost with a mortgage described in note 8.

The balance sheet presentation of the direct financing lease at December 31 is as follows:

	<u>2009</u>	<u>2008</u>
Minimum lease payments receivable	\$ 6,500,827	7,047,943
Unearned lease income	<u>(2,173,776)</u>	<u>(2,501,108)</u>
Net investment in direct financing lease	4,327,051	4,546,835
Less current portion	<u>547,116</u>	<u>547,116</u>
Long-term net investment in direct financing lease	<u>\$ 3,779,935</u>	<u>3,999,719</u>

(8) Long-Term Debt and Lease Obligations

Long-term debt consists of the following at December 31:

	<u>2009</u>	<u>2008</u>
Variable rate demand Civic Facility Revenue Bonds (Mohawk Valley Network, Inc. Obligated Group; Faxton-St. Luke's Healthcare)	\$ 18,725,000	19,120,000
Civic Facility Revenue Bonds (Mohawk Valley Network, Inc. Obligated Group; Faxton Hospital Facility)	12,555,000	14,475,000
Civic Facility Revenue Bonds (Mohawk Valley Network, Inc. Obligated Group; St. Luke's-Memorial Hospital Center Facility)	9,915,000	12,100,000
Unamortized premium on Civic Facility Revenue Bonds	116,481	141,391
Mortgage note payable in varying installments at interest rates ranging from 5% to 8% with a balloon payment estimated at \$2.5 million due January 2012, secured by property under direct financing lease (note 7)	2,930,150	3,103,314

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(8) Long-Term Debt and Lease Obligations

	<u>2009</u>	<u>2008</u>
Note payable to SLM at a fixed interest rate of 5.95% with a balloon payment estimated at \$1.5 million due February 2011	1,626,048	1,696,618
Note payable in monthly installments of \$2,233 at a fixed rate of 7.25% maturing November 2011	45,870	68,443
Note payable in monthly installments of \$10,201 at a fixed rate of 6.55%, maturing February 2012	245,759	348,140
Note payable in monthly installments of \$1,512 at a fixed rate of 6.75%, maturing February 2012	36,336	51,421
Note payable in monthly installments of \$2,366 at a fixed rate of 6.25%, maturing March 2012	59,431	83,216
Note payable in monthly installments of \$3,768 at a fixed rate of 6.34%, maturing November 2012	119,964	156,181
Mortgage payable in monthly installments of \$19,600 at a fixed rate of 6.10%, maturing March 2018. Mortgage was replaced as of December 2009 by mortgage payable in monthly installments of \$44,047 at a fixed rate of 6.50%, maturing January 2020	3,872,211	1,701,578
Note payable in varying monthly installments at LIBOR plus 2.15%, with a cap between 6% to 9% (6.0% at December 31, 2009) with a balloon payment estimated at \$1,947,000 due January 2020, collateralized by certain property	3,030,850	-
Note payable in varying monthly installments at interest rates of prime minus .5%, maturing April 2020, collateralized by certain property (2.75% at December 31, 2009) with a balloon payment estimated at \$279,000	488,675	-
Capital lease obligations	<u>12,500,366</u>	<u>11,760,181</u>
	66,267,141	64,805,483
Less current portion:		
Debt	(5,583,224)	(5,077,471)
Capital lease obligations	<u>(3,756,113)</u>	<u>(3,331,994)</u>
Long-term debt, net of current portion	<u>\$ 56,927,804</u>	<u>56,396,018</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(8) Long-Term Debt and Lease Obligations, Continued

Healthcare, through the Oneida County Industrial Development Agency (OCIDA), has issued serial and term Civic Facility Revenue Bonds as follows:

<u>Series</u>	<u>Term</u>	<u>Principal/Mandatory Sinking Fund Payments</u>	<u>Rate</u>
Faxton Hospital Facility:			
1998A - tax-exempt	2013	\$ 580,000 - 675,000	5.000%
1998B - taxable	2013	165,000 - 200,000	6.250%
1999C - tax-exempt	2015	755,000 - 1,035,000	6.00 - 6.625%
1999D - taxable	2015	540,000 - 805,000	8.375%
St. Luke's-Memorial Hospital Center Facility:			
1998A - tax-exempt	2013	\$ 1,115,000 - 1,295,000	5.20%
1998B - tax-exempt	2013	1,090,000 - 1,260,000	5.00%
1998C - taxable	2013	95,000 - 110,000	6.25%
Faxton-St. Luke's Healthcare:			
2006E - tax-exempt	2031	\$ 185,000 - 525,000	4.873 - 4.995%
2006F - taxable	2031	\$ 245,000 - 955,000	4.873 - 4.995%

Healthcare may, at its option, redeem certain of the term bonds maturing after January 1, 2008. The maximum redemption price is 102% of the bond face amount.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(8) Long-Term Debt and Lease Obligations, Continued

The Civic Facility Revenue Bonds are insured and are collateralized by Healthcare's gross receipts (as defined), including all rights to receive such receipts whether in the form of accounts receivable, contract rights or other rights. Healthcare entered into a lease agreement with OCIDA, which also acts as security for payment of the revenue bonds. Additional security is provided by a Master Trust Indenture under which the initial Members of the Obligated Group (Healthcare and MVN) are jointly and severally responsible for payment of the Bonds. The total debt outstanding for the Master Indenture Bonds at December 31, 2009 was \$41,195,000.

The variable rate demand bonds bear interest based on one of three modes - the weekly rate, the term rate, or the fixed rate - for periods selected by the Company. The interest rate for each mode will be the current market interest rate as determined by the remarketing agent of the bonds. The Company used the weekly rate during 2009 and 2008. At December 31, 2009, the bonds carried interest at rates of .35% and .23%. At December 31, 2008 the bonds carried interest at rates of 3.15% and 1.20%.

The variable rate demand bonds are remarketed by a remarketing agent in accordance with the terms of a remarketing agreement. The bonds will be remarketed whenever a new interest rate is in effect. If the bonds cannot be remarketed, they would be due and payable under the terms of the remarketing agreement; however, the Company can draw on a letter of credit with a bank in the amount of the then outstanding balance. Any amounts drawn on the letter of credit are due upon the expiration date of the letter of credit, which is currently June 25, 2013.

Various agreements relating to the revenue bonds establish covenants with which Healthcare has agreed to comply, including the following, among others. In any year, Healthcare will not dispose of operating assets exceeding 2.5% of the total book value of operating assets or accounts receivable with recourse having a book value in excess of 50% of the total book value of accounts receivable. The Obligated Group may not merge or consolidate with another entity unless certain conditions are met. Additional indebtedness is limited to certain provisions including borrowings not to exceed 15% of total operating revenue. The Obligated Group agreed to maintain a minimum debt service coverage ratio, as defined, of 120% annually. At December 31, 2009, the Obligated Group was in compliance with the covenants that are considered events of default.

At December 31, 2009, the Company had a \$17,500,000 line of credit with a bank, collateralized by substantially all of the Company's investments. The line of credit is available through July 2011. A portion of the line was reserved for four letters of credit totaling approximately \$7,099,000 related to self-insured liabilities. The line contains financial covenants including a debt service coverage ratio requirement, a day's cash on hand requirement and a minimum unrestricted liquidity to funded debt ratio. At December 31, 2009, the amount outstanding was \$2,030,000. There was no outstanding balance at December 31, 2008.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(8) Long-Term Debt and Lease Obligations, Continued

Healthcare leases certain equipment under capital leases. Healthcare also leases equipment and facilities under non-cancelable operating leases, including leases with related parties. The net book value of the equipment capitalized under lease agreements at December 31, 2009 and 2008 amounted to approximately \$17,900,000 and \$12,328,000, respectively.

Scheduled principal payments on long-term debt and payments under non-cancelable operating leases and the present value of future minimum capital lease payments at December 31, 2009 are:

Years ended December 31:	Long-term <u>debt</u>	Capital <u>leases</u>	<u>Operating leases</u>	
			<u>Related party</u>	<u>Other</u>
2010	\$ 5,583,224	4,348,568	207,512	760,082
2011	7,436,905	3,779,822	207,512	602,338
2012	8,416,719	2,365,181	207,512	500,332
2013	6,135,665	2,003,367	207,512	483,920
2014	2,772,672	665,823	207,512	456,170
Thereafter	<u>23,421,590</u>	<u>1,078,163</u>		
Total payments	53,766,775	14,240,924		
Less amounts representing interest (at rates varying from approximately 3.31% to 8.51%)		<u>1,740,558</u>		
Present value of capital lease obligations		12,500,366		
Less current portion		<u>3,756,113</u>		
Capital lease obligations, net of current portion		<u>\$ 8,744,253</u>		

Rent expense under operating leases amounted to approximately \$1,409,000 in 2009 and \$1,629,000 in 2008.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(8) Long-Term Debt and Lease Obligations, Continued

As a result of the aforementioned bond issuances, Healthcare has entered into two interest rate swap contracts to reduce its risk of exposure to changes in interest rates. The interest rate swaps effectively convert the variable rate of the 2006 bonds to fixed rates of 5.938% and 4.216% through June 2031. The swaps have been designated as cash flow hedges of the variable interest rate and are recorded at fair value as a liability of \$3,157,747 on the accompanying consolidated balance sheet as of December 31, 2009. The swaps have effective dates of June 26, 2006 and termination dates of June 1, 2031. The amounts exchanged are based on the notional amounts whereby Healthcare pays the swap counter-party interest at a fixed rate (4.216% - tax-exempt, 5.938% - taxable) and the swap counter-party pays Healthcare a variable rate (based on 70% of 1 month LIBOR tax-exempt, BMA Rate - taxable). The notional amounts and fair values based on quoted market prices, of Healthcare's interest rate swaps are as follows at December 31, 2009:

		<u>Notional amount</u>	<u>Liability market value</u>
Healthcare - Series E	\$	7,165,000	972,051
Healthcare - Series F		11,560,000	<u>2,185,696</u>
			<u>\$ 3,157,747</u>

The mark-to-market adjustments resulted in an increase in unrestricted net assets of \$3,215,813 for the year ended December 31, 2009. Changes in value of the swaps determined to arise from ineffectiveness of the instruments, as determined through the hypothetical derivative method, are recorded as a component of interest expense in the consolidated statements of operations and changes in net assets. For the year ended December 31, 2009, there was no significant ineffectiveness. Healthcare expects that the loss existing in unrestricted net assets to be reclassified into income from operations within the next 12 months will not be significant.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(9) Temporarily and Permanently Restricted Net Assets

Temporarily restricted net assets are available for the following purposes at December 31:

	<u>2009</u>	<u>2008</u>
Renovations	\$ 1,073,427	500,000
Continuous Learning Center	302,477	238,924
Capital improvements	-	27,335
Scholarship assistance	30,359	30,417
Specific program	<u>1,086,007</u>	<u>1,008,834</u>
	<u>\$ 2,492,270</u>	<u>1,805,510</u>

Permanently restricted net assets at December 31 are restricted to:

	<u>2009</u>	<u>2008</u>
Investments to be held in perpetuity, the income from which is to support charity care, health care services, scholarships and facility maintenance	<u>\$ 4,528,164</u>	<u>4,528,164</u>

(10) Pension Plans

Healthcare sponsors a 401(k) plan that covers substantially all full-time non-union employees. Healthcare contributes 5% of eligible compensation to the plan (4% for employees hired after December 1, 2001). Healthcare also makes a matching contribution up to 100% of the first 4% of employee contributions to the 401(k) plan. Healthcare also sponsors a 403(b) plan that covers union and certain other employees. Healthcare contributes 5% to 7% of eligible compensation to the 403(b) plan.

Pension expense under all plans aggregated approximately \$6,153,000 in 2009 and approximately \$5,560,000 in 2008.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(11) Estimated Medical Malpractice and General Liability Costs

Effective March 15, 2004, Healthcare is insured for medical malpractice risks through claims-made professional liability insurance. Should the annual claims-made policy not be renewed or replaced with equivalent insurance, claims based on incidents during its term, but reported subsequently, will be uninsured. No accrual for possible losses attributable to incidents that may have occurred but that have not been reported has been made because the amount is not reasonably estimable. Prior to that date, Healthcare maintained occurrence-based medical malpractice and general liability insurance coverage.

Healthcare is a defendant in various malpractice and general liability claims. The ultimate outcome of such litigation cannot be determined at this time. However, management believes the final disposition of these claims will not have a material effect on the financial position or results of operations of Healthcare.

Healthcare and certain of its affiliates were primarily self-insured for employee workers' compensation and disability claims through December 31, 2007. Self-insured liabilities are based on claims filed and estimates for claims incurred but not reported. As required by the State of New York Workers' Compensation Board, Healthcare has purchased letters of credit to guarantee payment of workers' compensation claims. Stop loss insurance for losses exceeding certain amounts has been purchased for workers' compensation. Each affiliate is jointly and severally liable for the satisfaction of all obligations. These liabilities are recorded at discounted amounts using a 4% interest rate in 2009 and a 7% interest rate in 2008.

Effective January 1, 2009, Healthcare became self-insured for healthcare claims. Healthcare has obtained a stop loss coverage policy for healthcare costs to supplement its self-insurance coverage. An accrual for healthcare claims, including those incurred but not reported, is included in the current portion of estimated self-insured liabilities.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(12) Affiliated Entities

The following represents summarized financial information from the financial statements of Healthcare's affiliates that are included in the accompanying financial statements on the equity method of accounting. As Faxchil was sold to an unaffiliated entity on December 9, 2009, the amounts for 2009 represent activity as of that date.

<u>2009</u>	<u>Foundation</u>	<u>SLM</u>	<u>Faxchil - consolidated</u>
Total assets	\$ 6,933,446	6,239,775	-
Total liabilities	<u>333,010</u>	<u>6,028,128</u>	<u>-</u>
Net assets	<u>\$ 6,600,436</u>	<u>211,647</u>	<u>-</u>
Total revenue	2,103,434	1,266,235	42,885,179
Total expenses	<u>(1,909,154)</u>	<u>1,209,222</u>	<u>41,177,546</u>
Excess of revenue over expenses and changes in net assets	<u>\$ 194,280</u>	<u>57,013</u>	<u>1,707,633</u>
 <u>2008</u>	 <u>Foundation</u>	 <u>SLM</u>	 <u>Faxchil - consolidated</u>
Total assets	\$ 5,825,433	6,525,441	15,744,573
Total liabilities	<u>106,094</u>	<u>6,529,033</u>	<u>15,948,083</u>
Net assets (deficiency)	<u>\$ 5,719,339</u>	<u>(3,592)</u>	<u>(203,510)</u>
Total revenue	454,362	1,301,488	42,203,205
Total expenses	<u>(1,849,327)</u>	<u>(1,335,036)</u>	<u>41,784,856</u>
Excess (deficiency) of revenue over expenses and changes in net assets	<u>\$ (1,394,965)</u>	<u>(33,548)</u>	<u>418,349</u>

The following are approximate dollar amounts of significant transactions and balances with affiliated entities.

Contributions from the Foundation to Healthcare amounted to approximately \$1,092,000 and \$1,080,000 in 2009 and 2008, respectively.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(12) Affiliated Entities, Continued

SLM Corporation, which is included on the equity method, is a for-profit real estate company whose stock is owned by a trust, of which Healthcare is the sole beneficiary. Healthcare rents space from SLM and provides utilities and maintenance services to SLM. Rent totaled approximately \$77,000 for 2009 and 2008 and services sold totaled approximately \$554,000 and \$679,000 in 2009 and 2008, respectively.

Included in supplies and other expenses are clinical laboratory services provided by Centrex to Healthcare of approximately \$10,624,000 and \$10,864,000 in 2009 and 2008, respectively.

Net receivables (payables) at December 31 from the following affiliates were approximately:

	<u>2009</u>	<u>2008</u>
Home	\$ 930,000	868,000
New Hartford Scanner Associates	644,000	605,000
MVN	1,818,000	1,562,000
VNA	183,000	20,000
Other	<u>223,000</u>	<u>(233,000)</u>
	<u>\$ 3,798,000</u>	<u>2,822,000</u>

New Hartford Scanner Associates (NHSA) is a joint venture between Healthcare and several radiologists to provide CT scan services. Healthcare receives income from NHSA, which amounted to approximately \$587,000 and \$736,000 in 2009 and 2008, respectively. Healthcare also provides payroll services to NHSA.

In addition to the foregoing, Healthcare, through its affiliation with MVN, is affiliated with several other entities all of which are independent from Healthcare and are engaged in serving the Mohawk Valley area as providers of various healthcare related services.

(13) Statements of Cash Flows - Supplemental Disclosures

Healthcare's non-cash investing and financing activity and cash payments for interest for the years ended December 31 were as follows:

	<u>2009</u>	<u>2008</u>
Non-cash investing and financing activity:		
Capital lease obligations issued for property and equipment	\$ 4,355,391	4,813,913
Long-term debt transferred - Faxchil	3,605,264	-
Cash paid for interest	4,128,249	3,925,853

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(14) Functional Expenses

Healthcare provides general health care services to residents of the Greater Utica area. Expenses related to providing these services are as follows:

	<u>2009</u>	<u>2008</u>
Health care services	\$ 233,550,729	219,868,997
General and administrative	<u>35,402,803</u>	<u>33,025,108</u>
	<u>\$ 268,953,532</u>	<u>252,894,105</u>

(15) Fair Value of Financial Instruments

The following methods and assumptions were used by Healthcare in estimating the fair value of its financial instruments:

Cash and Cash Equivalents: The amount reported on the balance sheet for cash and cash equivalents approximates fair value.

Investments including Assets Limited as to Use: The fair values, which are the amounts reported on the balance sheets, are based on quoted market prices, if available, or estimated using quoted market prices for similar securities.

Estimated Third-Party Payor Settlements: The amount reported on the balance sheet for estimated third-party payor settlements approximates its fair value.

Long-Term Debt: The fair value of fixed rate issues was determined by price quotes from an investment banker or estimated using discounted cash flow analysis, based on the current incremental borrowing rate of similar types of borrowing arrangements. The fair value of variable rate debt approximates its reported value on the balance sheet. Fixed rate long-term debt is the only financial instrument with a difference between recorded and fair value. The recorded value of fixed rate long-term debt on the balance sheet at December 31, 2009 was approximately \$34,437,000 and the estimated fair value was approximately \$37,712,000.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(15) Fair Value of Financial Instruments, Continued

The following tables present information about assets and liabilities and are measured at fair value on a recurring basis as of December 31 and indicate the fair value hierarchy of the valuation techniques utilized to determine such fair value. In general, fair values determined by Level 1 inputs utilize quoted prices in active markets for identical assets or liabilities. The Hospital considers a security that trades at least weekly to have an active market. Fair values determined by Level 2 inputs utilize data points that are observable, such as quoted prices, interest rates and yield curves. Fair values determined by Level 3 inputs are unobservable data points for the asset or liability, and include situations where there is little, if any, market activity for the asset or liability.

	Carrying amount at December 31, <u>2009</u>	<u>Fair value measurements at December 31, 2009</u>		
		<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Assets:				
Cash equivalents	\$ 35,167,623	35,167,623	-	-
Investments	22,001,460	21,464,540	-	536,920
Assets limited as to use	<u>8,596,966</u>	<u>6,429,717</u>	<u>2,167,249</u>	<u>-</u>
Total	<u>\$ 65,766,049</u>	<u>63,061,880</u>	<u>2,167,249</u>	<u>536,920</u>
Liabilities:				
Interest rate swaps	<u>(3,157,747)</u>	<u>-</u>	<u>(3,157,747)</u>	<u>-</u>
Total	<u>\$ (3,157,747)</u>	<u>-</u>	<u>(3,157,747)</u>	<u>-</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(15) Fair Value of Financial Instruments, Continued

		<u>Fair value measurements at December 31, 2008</u>		
	Carrying amount at December 31, 2008	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Assets:				
Cash equivalents	\$ 2,039,780	2,039,780	-	-
Investments	19,924,953	19,075,335	-	849,618
Assets limited as to use	<u>8,797,096</u>	<u>6,046,269</u>	<u>2,750,827</u>	<u>-</u>
Total	<u>\$ 30,761,829</u>	<u>27,161,384</u>	<u>2,750,827</u>	<u>849,618</u>
Liabilities:				
Interest rate swaps	<u>(6,373,560)</u>	<u>-</u>	<u>(6,373,560)</u>	<u>-</u>
Total	<u>\$ (6,373,560)</u>	<u>-</u>	<u>(6,373,560)</u>	<u>-</u>



ST. ELIZABETH MEDICAL CENTER

Financial Statements

December 31, 2009 and 2008

(With Independent Auditors' Report Thereon)



KPMG LLP
515 Broadway
Albany, NY 12207-2974

Independent Auditors' Report

The Board of Trustees
St. Elizabeth Medical Center:

We have audited the accompanying balance sheets of St. Elizabeth Medical Center (the Medical Center) as of December 31, 2009 and 2008, and the related statements of operations and changes in net assets, and cash flows for the years then ended. These financial statements are the responsibility of the Medical Center's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Medical Center's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of St. Elizabeth Medical Center as of December 31, 2009 and 2008, and the results of its operations and changes in net assets, and its cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

KPMG LLP

April 28, 2010

ST. ELIZABETH MEDICAL CENTER

Balance Sheets

December 31, 2009 and 2008

Assets	2009	2008
Current:		
Cash and cash equivalents	\$ 6,271,861	6,019,273
Current portion of assets whose use is limited	388,455	408,084
Investments	20,593,455	18,288,672
Patient accounts receivable, net of allowance for doubtful accounts of \$4,478,000 in 2009 and \$3,142,000 in 2008	23,971,266	24,254,321
Other receivables, net	560,497	664,635
Inventories of drugs and supplies	5,597,940	4,502,573
Prepaid expenses	493,919	400,078
Total current assets	57,877,393	54,537,636
Assets whose use is limited:		
Under bond indenture agreements	2,672,643	2,616,407
Restricted by donors	579,389	612,435
Property, plant, and equipment, net of accumulated depreciation and amortization	67,186,109	63,770,278
Interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	1,839,425	2,197,380
Other assets	1,196,229	1,284,668
Total assets	\$ 131,351,188	125,018,804
Liabilities and Net Assets		
Current:		
Current installments of long-term debt	\$ 1,295,000	1,170,000
Current installments of obligations under capital leases	632,634	603,594
Current installments of loans payable to Motherhouse	130,726	130,726
Accounts payable	17,761,335	15,501,699
Accrued expenses	4,874,154	5,518,828
Liabilities to third-party payors	11,427,173	11,338,911
Total current liabilities	36,121,022	34,263,758
Accrued pension liability	35,938,659	34,925,223
Long-term debt, excluding current installments	35,151,608	36,758,705
Obligations under capital leases, excluding current installments	2,273,354	2,862,930
Loans payable to Motherhouse, excluding current installments	1,830,163	1,960,889
Total liabilities	111,314,806	110,771,505
Net assets:		
Unrestricted	18,772,238	12,596,369
Temporarily restricted	887,830	1,275,616
Permanently restricted	376,314	375,314
Total net assets	20,036,382	14,247,299
Total liabilities and net assets	\$ 131,351,188	125,018,804

See accompanying notes to financial statements.

ST. ELIZABETH MEDICAL CENTER

Statements of Operations and Changes in Net Assets

Years ended December 31, 2009 and 2008

	<u>2009</u>	<u>2008</u>
Unrestricted revenue:		
Net patient service revenue	\$ 199,113,192	183,399,583
Other operating revenue	4,708,874	4,525,107
Unrestricted contributions	228,106	352,325
Investment income	894,163	902,659
Net assets released from restrictions for operations	<u>23,616</u>	<u>17,850</u>
Total unrestricted revenue, gains, and other support	<u>204,967,951</u>	<u>189,197,524</u>
Expenses:		
Salaries and wages	88,402,306	82,794,747
Professional fees	8,713,580	7,491,968
Employee benefits	22,263,856	20,745,352
Supplies and expenses	60,020,177	56,015,189
Utilities	2,436,372	3,129,197
Depreciation and amortization	8,161,091	8,024,001
Provision for doubtful accounts	7,276,636	6,868,172
Interest	<u>1,953,752</u>	<u>2,218,335</u>
Total expenses	<u>199,227,770</u>	<u>187,286,961</u>
Excess of revenue over expenses	5,740,181	1,910,563
Net unrealized gain (loss) on other than trading securities	261,831	(236,130)
Pension related changes other than net periodic pension cost	(827,954)	(10,662,662)
Increase in interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	25,853	336,103
Net assets released from restrictions for capital purchases	<u>975,958</u>	<u>1,763,797</u>
Increase (decrease) in unrestricted net assets	<u>6,175,869</u>	<u>(6,888,329)</u>
Temporarily restricted net assets:		
Contributions	979,969	656,900
Interest income on permanently restricted assets	17,146	20,384
Decrease in interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	(385,327)	—
Net assets released from restrictions	<u>(999,574)</u>	<u>(1,781,647)</u>
Decrease in temporarily restricted net assets	<u>(387,786)</u>	<u>(1,104,363)</u>
Increase in permanently restricted net assets – contributions	<u>1,000</u>	<u>32,200</u>
Change in net assets	5,789,083	(7,960,492)
Net assets at beginning of year	<u>14,247,299</u>	<u>22,207,791</u>
Net assets at end of year	<u>\$ 20,036,382</u>	<u>14,247,299</u>

See accompanying notes to financial statements.

ST. ELIZABETH MEDICAL CENTER

Statements of Cash Flows

Years ended December 31, 2009 and 2008

	<u>2009</u>	<u>2008</u>
Cash flows from operating and nonoperating activities:		
Change in net assets	\$ 5,789,083	(7,960,492)
Adjustments to reconcile change in net assets to net cash provided by operating and nonoperating activities:		
Depreciation and amortization	8,161,091	8,024,001
Amortization of debt discount	17,903	18,096
Contributions and grants restricted for capital purchases and endowments	(980,969)	(689,100)
Decrease in interest in net assets of St. Elizabeth Medical Center Foundation, Inc.	357,955	92,280
Net unrealized (gain) loss on other than trading securities	(261,831)	236,130
Increase in accrued pension liability	1,013,436	11,342,657
Provision for doubtful accounts	7,276,636	6,868,172
Loss on disposal of equipment	48,815	61,743
Changes in current assets and current liabilities:		
Patient and other accounts receivable	(6,889,443)	(7,657,941)
Inventories of drugs and supplies	(1,095,367)	(166,745)
Prepaid expenses	(93,841)	(15,459)
Accounts payable	2,259,636	(1,653,981)
Accrued expenses	(644,674)	(1,226,696)
Liabilities to third-party payors	88,262	1,909,481
Net cash provided by operating and nonoperating activities	<u>15,046,692</u>	<u>9,182,146</u>
Cash flows from investing activities:		
Additions to property, plant, and equipment	(11,537,298)	(7,229,397)
Purchases of investments, net	(2,042,952)	(4,963,409)
Net cash used in investing activities	<u>(13,580,250)</u>	<u>(12,192,806)</u>
Cash flows from financing activities:		
(Increase) decrease in assets whose use is limited	(3,561)	506,925
Contributions and grants restricted for capital purchases and endowments	980,969	689,100
Scheduled principal payments on long-term debt	(1,170,000)	(1,011,446)
Additional principal payments on long-term debt	(330,000)	(1,685,000)
Principal payments under capital lease obligations	(560,536)	(451,812)
Principal payments on loans payable to Motherhouse	(130,726)	(130,725)
Net cash used in financing activities	<u>(1,213,854)</u>	<u>(2,082,958)</u>
Net increase (decrease) in cash and cash equivalents	252,588	(5,093,618)
Cash and cash equivalents:		
Beginning of year	<u>6,019,273</u>	<u>11,112,891</u>
End of year	<u>\$ 6,271,861</u>	<u>6,019,273</u>
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	\$ 2,149,855	2,057,076
Noncash investing and financing activity – capital lease obligations incurred	—	2,766,316

See accompanying notes to financial statements.

ST. ELIZABETH MEDICAL CENTER

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(1) Organization

St. Elizabeth Medical Center (the Medical Center) is a voluntary not-for-profit acute care facility located in Utica, New York. The Medical Center provides medical, surgical, and psychiatric inpatient services. In addition, the Medical Center offers outpatient general diagnostic, ambulatory care, physical therapy, and emergency care services.

(2) Summary of Significant Accounting Policies

(a) *Basis of Presentation*

The Medical Center's financial statements have been prepared consistent with FASB ASC Topic 954, *Health Care Entities* (ASC Topic 954) (formerly the AICPA Audit and Accounting Guide, *Health Care Organizations*). In accordance with the provisions of ASC Topic 954, net assets and revenue, expenses, gains, and losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, unrestricted net assets are net assets that are not subject to donor-imposed stipulations and are available for operations. Assets whose use is limited include assets which are restricted under bond indenture agreements or by donor restrictions. Temporarily restricted net assets are those whose use by the Medical Center has been limited by donors to a specific time period or purpose. Permanently restricted net assets result from donors who stipulate that their donated resources be maintained permanently. The Medical Center is permitted to use or expend part or all of the income and gains derived from the donated assets, restricted only by the donors' wishes.

(b) *Use of Estimates*

The preparation of the accompanying financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions about future events. These estimates and the underlying assumptions affect the amounts of assets and liabilities reported, disclosures about contingencies, and reported amounts of revenues and expenses. Such estimates and assumptions include the allowance for uncollectible accounts, estimated third-party payor settlements, and defined benefit pension plan assumptions. These estimates and assumptions are based on management's best estimates and judgment. Management evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors, including the current economic environment, which management believes to be reasonable under the circumstances. Management adjusts such estimates and assumptions when facts and circumstances dictate. As future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Changes in those estimates resulting from continuing changes in the economic environment will be reflected in the financial statements in future periods.

(c) *Excess of Revenue Over Expenses*

The statements of operations and changes in net assets include excess of revenue over expenses. Changes in unrestricted net assets which are excluded from excess of revenue over expenses, consistent with industry practice, include unrealized gains and losses on investments other than trading securities, permanent transfers of assets to and from affiliates for other than goods and services, contributions of long-lived assets (including assets acquired using contributions which by

ST. ELIZABETH MEDICAL CENTER

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donor restriction were to be used for the purposes of acquiring such assets), and pension liability adjustments in accordance with FASB ASC Subtopic 715-30, *Compensation – Retirement Benefits, Defined Benefit Plans - Pension*.

(d) *Income Taxes*

The Medical Center is a not-for-profit organization as described in Section 501(c)(3) of the Internal Revenue Code and is generally exempt from federal income taxes on related income pursuant to Section 501(a) of the Code.

(e) *Revenue Recognition*

Net patient service revenue is recognized in the period services are performed, is reported at estimated net realizable amounts from patients, third-party payors, and others for services rendered and includes estimated retroactive revenue adjustments due to future audits, reviews, and investigations. Retroactive adjustments are considered in the recognition of revenue on an estimated basis in the period the related services are rendered, and such amounts are adjusted in future periods as adjustments become known or as years are no longer subject to such audits, reviews, and investigations.

(f) *Gifts and Donations*

Unconditional promises to give cash and other assets are reported at fair value at the date the promise is received, which then are treated as cost. Conditional promises to give and indications of intentions are reported at fair value at the date the gift is received. Gifts and donations are reported as either temporarily or permanently restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated time restriction ends or purpose restriction is accomplished, temporarily restricted net assets are reclassified as unrestricted net assets and reported in the statements of operations and changes in net assets as net assets released from restriction.

(g) *Charity Care*

The Medical Center does not deny services to a person who needs them but cannot pay for them, and it maintains certain records to identify and monitor the level of charity care it provides. These records relate primarily to the amount of charges foregone for services and supplies furnished under its charity care policy. The total of charges foregone, based on established charges, was approximately \$2,689,000 and \$2,283,000 in 2009 and 2008, respectively; the estimated cost incurred to provide such charity care was approximately \$1,199,000 and \$1,111,000 in 2009 and 2008, respectively.

The Medical Center grants credit without collateral to patients, most of whom are local residents and are insured under third-party agreements. Additions to the allowance for doubtful accounts are made by means of the provision for doubtful accounts. Accounts written off as uncollectible are deducted from the allowance and subsequent recoveries are added. The amount of the provision for doubtful accounts is based upon management's assessment of historical expected net collections, business and economic conditions, trends in federal and state governmental health care coverage and other

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collection indicators. Services rendered to individuals when payment is expected and ultimately not received are written off to the allowance for doubtful accounts.

(h) *Cash and Cash Equivalents*

The Medical Center considers all highly liquid debt instruments with original maturities of three months or less to be cash equivalents. Only unrestricted cash and cash equivalents which are classified as current assets are considered for purposes of the statements of cash flows. Cash equivalents consist of certificates of deposit, money market funds, and daily dividend accounts.

(i) *Investments and Assets Whose Use is Limited*

Investments, assets whose use is limited, and pension plan assets are reported at fair market value. FASB ASC No. 820, *Fair Value and Disclosures* (ASC 820), defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. See note 5 for discussion on fair value measurements.

Gains or losses on the sale of investments and investment income are recorded as unrestricted revenue. Income of temporarily and permanently restricted net assets that is specifically restricted by the donor is recorded as an increase in the appropriate class of net assets. Unrealized gains and losses are recorded as changes in unrestricted net assets unless explicitly restricted by the donor or law. Unrealized gains and losses restricted by the donor or law are recorded as changes in temporarily or permanently restricted net assets. Unrealized gains and losses on investments are excluded from the statements of operations unless the investments are trading securities.

For 2009 and 2008, the Medical Center's investments were held for purposes other than trading. A decline in the market value of an investment security below its cost that is designated to be other than temporary is recognized through an impairment charge. The impairment charge is included in the excess of support, revenue, and gains over expenses in the statements of operations and changes in net assets and a new cost basis is established.

A decline in the market value of any security below cost that is deemed to be other-than-temporary results in an impairment to reduce the carrying amount to fair value. To determine whether an impairment is other-than-temporary, the Medical Center considers all available information relevant to the collectibility of the security, including past events, current conditions, and reasonable and supportable forecasts when developing estimates of cash flows expected to be collected. Evidence considered in this assessment includes the reasons for the impairment, the severity and duration of the impairment, and changes in value subsequent to year-end.

When an other-than-temporary impairment has occurred, the amount of the other-than-temporary impairment recognized in the excess revenue, gains, and other support over expenses depends on whether the Medical Center intends to sell the security or more likely than not will be required to sell the security before recovery of its amortized cost basis less any current-period credit loss. If the Medical Center intends to sell the security or more likely than not will be required to sell the security before recovery of its amortized cost basis less any current-period credit loss, the other-than-temporary impairment is recognized in the excess of revenue over expenses equal to the entire difference between the investment's amortized cost basis and its fair value at the balance sheet

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date. If the Medical Center does not intend to sell the security and it is not more likely than not that the Medical Center will be required to sell the security before recovery of its amortized cost basis less any current-period credit loss, the other-than-temporary impairment is separated into the amount representing the credit loss and the amount related to all other factors. The amount of the total other-than-temporary impairment related to the credit loss is recognized in the excess of revenue over expenses and the amount of the total other-than-temporary impairment related to other factors is recognized as a change in net assets. No other-than-temporary impairment was recorded during the years ended December 31, 2009 and 2008.

(j) *Fair Value of Financial Instruments*

The carrying values of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses are reasonable estimates of their fair value due to the short-term nature of these financial instruments. The Medical Center's long-term debt instruments are carried at cost. Fair values are estimated based on quoted market prices for the same or similar issues. The estimated fair value of the Medical Center's long-term debt as of December 31, 2009 and 2008 is approximately \$37,666,000 and \$36,581,000, respectively. The estimated fair value of the Medical Center's loans payable to the Motherhouse is approximately \$1,403,000 and \$1,462,000 as of December 31, 2009 and 2008, respectively. The fair value of debt and loans payable to the Motherhouse was estimated by discounted cash flow analysis using current borrowing rates for similar types of arrangements. Judgment is required in certain circumstances to develop the estimates of fair value, and the estimates may not be indicative of the amounts that could be realized in a current market exchange.

(k) *Inventories of Drugs and Supplies*

Inventories of drugs and supplies are stated at the lower of average cost or market.

(l) *Property, Plant, and Equipment*

Property, plant, and equipment is stated at cost, if purchased, or at market value at the date of acquisition when acquired by gift. Equipment which is purchased under capital leases is stated at the lower of the present value of minimum lease payments at the beginning of the lease term or the fair market value at the inception of the lease.

Depreciation of property, plant, and equipment is calculated on the straight-line method over the estimated useful lives of the assets as follows:

Land improvements	2-20 years
Buildings	5-40 years
Fixed equipment	2-20 years
Movable equipment	2-10 years

Equipment held under capital leases is amortized on the straight-line method over the estimated useful life of the asset or the lease term.

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(m) Interest in Net Assets of St. Elizabeth Medical Center Foundation, Inc.

The Medical Center accounts for its interest in the net assets of the St. Elizabeth Medical Center Foundation, Inc. (the Foundation) in accordance with the provisions of FASB ASC Subtopic 958-605, *Not-for-Profit Entities – Revenue Recognition* (ASC Subtopic 958-605). Under ASC Subtopic 958-605, the Medical Center recognizes its interest in the net assets of the Foundation and adjusts that interest annually for its share of the change in net assets.

(n) Debt Financing Costs

Debt financing costs are included in other noncurrent assets and are being amortized on a straight-line basis over the terms of the respective loans.

(o) Adoption of New Accounting Pronouncements

In May 2008, the Financial Accounting Standards Board (FASB) issued FASB Staff Position SOP 94-3-1 and AAG-HCOa, *Omnibus Changes to Consolidation and Equity Method Guidance for Not-for-Profit Organizations* (FSP SOP 94-3-1) (currently incorporated in ASC Subtopic 958-810, *Not-for-Profit Entities - Consolidation* (ASC Subtopic 958-810), to address conflicts in the existing authoritative accounting literature concerning the consolidation and equity method guidance for not-for-profit organizations. The Medical Center adopted FSP SOP 94-3-1 (currently incorporated in ASC Subtopic 958-810) during the year ended December 31, 2009 and the adoption did not have a material effect on the financial statements.

In December 2008 and effective December 31, 2009, the FASB issued Accounting Standard Codification (ASC) No. 715-20-50 and 55, which require additional disclosures for employers' defined benefit pension plan assets, including information about fair value measurements of plan assets similar to the disclosures required under ASC No. 820. The adoption of ASC 715-20-50 did not have a material impact on the Medical Center's financial position, results of operations, or cash flows since its requirements were limited to additional disclosures.

In April 2009, the FASB issued ASC No. 320-10-65, *Transition Related to Recognition and Presentation of Other-Than-Temporary Impairments* (FASB ASC Section 320-10-65), previously referred to as FASB Staff Position SFAS 115-2 and SFAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments* (FSP No. 115-2). FASB ASC Section 320-10-65 amends the other-than-temporary impairment guidance for debt securities to make the guidance more operational and to improve the presentation and disclosure of other-than-temporary impairments in the financial statements. The most significant change FASB Section ASC 320-10-65 brings is a revision to the amount of other-than-temporary loss of a debt security recorded in operations. The Medical Center adopted the provisions of FASB ASC Section 320-10-65 during the year ended December 31, 2009 and the adoption did not have a material effect on the financial statements.

In June 2009, the FASB issued ASC No. 105, *Generally Accepted Accounting Principles (GAAP)* (ASC 105 or FASB Codification), previously referred to as Statement of Financial Accounting Standard (SFAS) No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles - a replacement of FASB Statement No 162* (SFAS 168). The FASB Codification is the authoritative source of generally accepted accounting

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principles in the United States. The issuance of the FASB Codification was not intended to change or alter existing GAAP. The effective date for use of the FASB Codification is for interim and annual periods ending after September 15, 2009 and should be accounted for on a prospective basis. The Medical Center adopted the FASB Codification on December 31, 2009 and the adoption did not have any effect on the financial statements. The Medical Center has appropriately updated its disclosures with the appropriate FASB Codification references during the year ended December 31, 2009.

In May 2009, the FASB issued ASC No. 855, *Subsequent Events* (ASC Topic 855), previously referred to as SFAS No. 165, *Subsequent Events*. ASC Topic 855 should be applied to the accounting for and disclosure of subsequent events. ASC Topic 855 does not apply to subsequent events or transactions that are within the scope of other applicable GAAP that provide different guidance on the accounting treatment for subsequent events or transactions. The objective of ASC Topic 855 is to establish general standards of accounting for and disclosures of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. ASC Topic 855 also requires entities to disclose the date through which they have evaluated subsequent events and whether the date corresponds with the release of their financial statements. The Medical Center adopted ASC Topic 855 during the year ended December 31, 2009 and the adoption did not have a material effect on the financial statements. See note 16 for this new disclosure.

(p) Reclassifications

Certain amounts in the 2008 financial statements have been reclassified to conform to the 2009 presentation.

(3) Net Patient Service Revenue

The Medical Center has agreements with third-party payors that provide for payments at amounts different from their established rates. Inpatient acute care services rendered are paid at prospectively determined rates per discharge in accordance with the Federal Prospective Payment System (PPS) for Medicare and generally at negotiated or otherwise pre-determined amounts under the provisions of the New York Health Care Reform Act (HCRA) and related legislation for all other payors. Reimbursement rates for Medicaid, Worker's Compensation, and No-Fault are determined on a prospective basis defined by HCRA that is based on clinical, diagnostic, and other factors. Inpatient nonacute and outpatient services are paid at various rates under different arrangements with third-party payors, commercial insurance carriers and health maintenance organizations. The basis for payment under these agreements includes prospectively determined per diem and per visit rates, discounts from established charges, fee schedules, and reasonable cost. Medicare outpatient services are paid under a prospective payment system whereby services are reimbursed on a predetermined amount for each outpatient procedure, subject to various mandated modifications.

In addition, under HCRA, all Non-Medicare payors are required to make surcharge payments for the subsidization of indigent care and other health care initiatives. The percentage amounts of the surcharge varies by payor and applies to a broader array of health care services. Also, certain payors are required to make a covered lives payment to further fund the indigent care pools and other health care initiatives for inpatient services or through voluntary election to pay a covered lives assessment directly to the New York State Department of Health (DOH). The funds are distributed to the hospitals based on the each hospital's

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level of bad debt in relation to all other hospitals. The Medical Center recorded distributions of approximately \$1,762,000 and \$1,344,000 for 2009 and 2008, respectively, from the indigent care pool.

Both federal and New York State regulations provide for certain adjustments to current and prior years' payment rates and indigent care pool distributions based on industry-wide and hospital-specific data. The Medical Center has established estimates based on information presently available of the amounts due to or from Medicare, Medicaid, workers compensation and no-fault payors and amounts due from the indigent care pool for such adjustments. Those adjustments which can be reasonably estimated have been provided for in the accompanying financial statements. The Medical Center has estimated the potential impact of such adjustments based on the most recent information available. Management believes the amounts recorded in the accompanying financial statements will not be materially affected upon the implementation of such adjustments.

For the years ended December 31, 2009 and 2008, revenue from the Medicare and Medicaid programs accounted for approximately 44% and 42%, respectively, of the Medical Center's net patient service revenue. At December 31, 2009 and 2008, the Medical Center had recorded patient accounts receivable, net of estimated contractual allowances, from Medicare of approximately \$6,270,000 and \$5,901,000, respectively, and Medicaid of approximately \$1,785,000 and \$2,106,000, respectively. Laws and regulations governing Medicare and Medicaid programs are complex and subject to interpretation. As a result, there is at least a reasonable possibility that recorded estimates may change by a material amount in the near term. The Medical Center believes that it is in compliance, in all material respects, with all applicable laws and regulations and is not aware of any pending or threatened investigations involving allegations of potential wrongdoing. While no such regulatory inquiries have been made, compliance with such laws and regulations can be subject to future government review and interpretation. Noncompliance with such laws and regulations could result in repayments of amounts improperly reimbursed, substantial monetary fines, civil and criminal penalties, and exclusion from the Medicare and Medicaid programs.

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(4) Investments

(a) Assets Whose Use is Limited

The composition of assets whose use is limited at December 31 is set forth in the table below.

	<u>2009</u>	<u>2008</u>
Under bond indenture agreements:		
Cash and cash equivalents	\$ 534,120	511,484
Commercial paper	<u>2,526,978</u>	<u>2,513,007</u>
	3,061,098	3,024,491
Less current portion	<u>388,455</u>	<u>408,084</u>
	<u>\$ 2,672,643</u>	<u>2,616,407</u>
Restricted by donors:		
Cash and cash equivalents	\$ 278,237	320,534
U.S. government and agency obligations	198,630	189,887
Mortgage-backed securities	<u>102,522</u>	<u>102,014</u>
	<u>\$ 579,389</u>	<u>612,435</u>

(b) Investments

The composition of investments at December 31 is set forth in the table below.

	<u>2009</u>	<u>2008</u>
Cash and cash equivalents	\$ 78,775	253,250
Certificates of deposit	6,959,005	6,954,805
Common stock	857,163	705,702
Equity mutual funds	450,470	208,603
Fixed income mutual funds	78,962	—
U.S. Treasury obligations	2,159,607	1,226,225
U.S. government and agency obligations	2,295,392	4,469,765
Corporate bonds	2,612,960	717,471
Mortgage-backed securities	4,918,991	3,621,218
Real estate investment trusts	50,497	—
Equity investment in medical leasing company	<u>131,633</u>	<u>131,633</u>
	<u>\$ 20,593,455</u>	<u>18,288,672</u>

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Information regarding investments and assets whose use is limited with unrealized losses at December 31, 2009 and 2008 is presented below, segregated between those that have been in a continuous unrealized loss position for less than twelve months and those that have been in a continuous unrealized loss position for twelve or more months:

	December 31, 2009			
	Less than 12 months		12 months or longer	
	Fair value	Unrealized loss	Fair value	Unrealized loss
Assets whose use is limited:				
U.S. government and agency obligations	\$ —	—	18,444	366
Investments:				
Certificates of deposit	2,003,123	12,877	—	—
Common stock	66,273	1,903	93,286	29,300
Equity mutual funds	—	—	46,656	5,363
U.S. Treasury obligations	978,825	9,808	—	—
U.S. government and agency obligations	1,674,568	10,433	11,271	224
Mortgage backed securities	1,437,413	7,587	—	—
Corporate bonds	772,183	5,778	—	—
Total temporarily impaired securities	<u>\$ 6,932,385</u>	<u>48,386</u>	<u>169,657</u>	<u>35,253</u>

	December 31, 2008			
	Less than 12 months		12 months or longer	
	Fair value	Unrealized loss	Fair value	Unrealized loss
Assets whose use is limited:				
Mortgage backed securities	\$ —	—	67,015	4,745
U.S. government and agency obligations	128,499	1,226	61,384	2,146
Investments:				
Certificates of deposit	93,992	2,008	—	—
Common stock	280,850	94,056	12,395	14,309
Equity mutual funds	32,337	163	62,665	46,804
U.S. government and agency obligations	7,990	50	10,972	523
Mortgage backed securities	—	—	9,712	688
Corporate bonds	232,973	6,175	—	—
Total temporarily impaired securities	<u>\$ 776,641</u>	<u>103,678</u>	<u>224,143</u>	<u>69,215</u>

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Notes to Financial Statements

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(5) Fair Value Measurements

In accordance with ASC 820, the Medical Center estimates fair value based on a valuation framework that uses a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). Financial assets recorded at fair value by the Medical Center on a recurring basis are investments. The three levels of fair value hierarchy are described below:

- Level 1:* Quoted prices in active markets that are accessible at the measurement date for identical assets and liabilities. Level 1 includes debt and equity securities that are traded in an active exchange market, as well as U.S. treasury securities.
- Level 2:* Inputs, other than quoted prices in active markets, that are observable either directly or indirectly and fair value is determined through the use of models or other valuation methodologies. This category generally includes certain U.S. government and agency obligations and fixed income securities.
- Level 3:* Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the asset or liabilities. Level 3 assets and liabilities include financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation. This category generally includes certain private debt and equity instruments and alternative investments.

Fair values for securities are based on quoted market prices or dealer quotes, where available. When quoted market prices are not available, fair values are based on quoted market prices of comparable instruments. When necessary, the Medical Center utilizes matrix pricing from a third party pricing vendor to determine fair value pricing. Matrix prices are based on quoted prices for securities with similar coupons, ratings, and maturities, rather than on specific bids and offers for the designated security.

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The following table sets forth the Medical Center's cash and cash equivalents and investments that were accounted for at fair value at December 31, 2009 and 2008. Cash and cash equivalents and investments are classified in their entirety based on the lowest level of input that is significant to the fair value measurements:

	2009		Total
	Level 1	Level 2	
Cash and cash equivalents	\$ 6,271,861	—	6,271,861
Assets whose use is limited:			
Under bond indenture agreements:			
Cash and cash equivalents	534,120	—	534,120
Commercial paper	2,526,978	—	2,526,978
Restricted by donors:			
Cash and cash equivalents	278,237	—	278,237
U.S. government and agency	—	198,630	198,630
Mortgage-backed securities	—	102,522	102,522
Investments			
Cash and cash equivalents	78,775	—	78,775
Certificates of deposit	6,959,005	—	6,959,005
Corporate bonds	—	2,612,960	2,612,960
Common stock	857,163	—	857,163
Equity mutual funds	450,470	—	450,470
Fixed income securities	—	78,962	78,962
U.S. Treasury obligations	2,159,607	—	2,159,607
U.S. government and agency	—	2,295,392	2,295,392
Mortgage-backed securities	—	4,918,991	4,918,991
Real estate investment trusts	—	50,497	50,497
	<u>\$ 20,116,216</u>	<u>10,257,954</u>	<u>30,374,170</u>

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	2008		
	Level 1	Level 2	Total
Cash and cash equivalents	\$ 6,019,273	—	6,019,273
Assets whose use is limited:			
Under bond indenture agreements:			
Cash and cash equivalents	511,484	—	511,484
Commercial paper	2,513,007	—	2,513,007
Restricted by donors:			
Cash and cash equivalents	320,534	—	320,534
U.S. government and agency	—	189,887	189,887
Mortgage-backed securities	—	102,014	102,014
Investments			
Cash and cash equivalents	253,250	—	253,250
Certificates of deposit	6,954,806	—	6,954,806
Corporate bonds	—	717,471	717,471
Common stock	705,702	—	705,702
Equity mutual funds	208,603	—	208,603
U.S. Treasury obligations	1,226,225	—	1,226,225
U.S. government and agency	—	4,469,764	4,469,764
Mortgage-backed securities	—	3,621,218	3,621,218
	<u>\$ 18,712,884</u>	<u>9,100,354</u>	<u>27,813,238</u>

There are no financial assets or liabilities included in Level 3 at December 31, 2009 or 2008.

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(6) Property, Plant, and Equipment

Property, plant, and equipment at December 31 are as follows:

	<u>2009</u>	<u>2008</u>
Land	\$ 1,198,138	853,135
Land improvements	5,669,812	5,610,865
Buildings	68,461,015	64,322,736
Fixed equipment	35,562,102	32,952,863
Movable equipment	<u>41,539,409</u>	<u>39,337,759</u>
	152,430,476	143,077,358
Less accumulated depreciation	<u>90,390,869</u>	<u>83,684,011</u>
	62,039,607	59,393,347
Construction in progress	<u>2,465,098</u>	<u>1,253,673</u>
	<u>64,504,705</u>	<u>60,647,020</u>
Capitalized leases:		
Buildings	1,400,000	1,400,000
Movable equipment	<u>2,766,316</u>	<u>2,766,316</u>
	4,166,316	4,166,316
Less accumulated amortization	<u>1,484,912</u>	<u>1,043,058</u>
	<u>2,681,404</u>	<u>3,123,258</u>
	<u>\$ 67,186,109</u>	<u>63,770,278</u>

Depreciation expense for 2009 and 2008 was \$8,072,652 and \$7,957,603, respectively.

(7) Short-Term Borrowings

The Medical Center maintains a line of credit with a lender which provides for borrowings up to \$6,000,000 at December 31, 2009 and 2008 secured by the Medical Center's College of Nursing building (net book value of \$54,000 at December 31, 2009), and up to \$7,000,000 of eligible accounts receivable, as defined. Borrowings against this line of credit are payable on demand and bear interest at the lender's prime rate (3.25% at December 31, 2009 and 2008). There were no amounts outstanding under this arrangement at December 31, 2009 and 2008.

ST. ELIZABETH MEDICAL CENTER

Notes to Financial Statements

December 31, 2009 and 2008

(8) Long-Term Debt

Long-term debt at December 31 is as follows:

	<u>2009</u>	<u>2008</u>
(a) Series 1999-A Bonds (\$15,000,000 principal amount less unamortized discount of \$119,013 and \$127,471 at December 31, 2009 and 2008, respectively)	\$ 14,070,977	14,242,518
(b) Series 1999-B Bonds (\$15,000,000 principal amount less unamortized discount of \$124,416 and \$133,861 at December 31, 2009 and 2008, respectively)	12,475,631	12,986,187
(c) Series 2006-A Bonds (\$14,000,000 principal at December 31, 2009)	<u>9,900,000</u>	<u>10,700,000</u>
	36,446,608	37,928,705
Less current installments	<u>1,295,000</u>	<u>1,170,000</u>
	<u>\$ 35,151,608</u>	<u>36,758,705</u>

- (a) In April 1999, the Medical Center obtained financing of \$15,000,000 through the placement of Oneida County Industrial Development Agency Civic Facility Revenue Bonds, Series 1999-A (the Series 1999-A Bonds). The Series 1999-A Bond proceeds were used to refinance existing mortgage indebtedness; install new boilers and chillers; make additional energy management improvements; construct a new boiler house; add a new parking lot; renovate the pediatric unit and the third floor surgical units. The Series 1999-A Bonds mature as follows: \$1,000,000 on December 2010 with interest payable semiannually at an annual rate of 5.500%; \$4,425,000 on December 2019 with interest payable semiannually at an annual rate of 5.750%; and \$9,575,000 on December 2029 with interest payable semiannually at an annual rate of 5.875%. The Medical Center is required to make sinking fund payments to be used for mandatory redemption of the Series 1999-A Bonds which commenced with a payment of \$70,000 in December 2004 and continuing annually in increasing amounts through December 2029. The Medical Center is also required to maintain certain covenants under the Bond agreement including minimum debt service coverage.
- (b) In June 1999, the Medical Center obtained additional financing of \$15,000,000 through the placement of Oneida County Industrial Development Agency Civic Facility Revenue Bonds, Series 1999-B (the Series 1999-B Bonds). The Series 1999-B Bond proceeds were used primarily to construct and equip a two-story addition to house ten new surgical suites including ambulatory surgery and a 16-bed intensive care unit. The Series 1999-B Bonds mature as follows: \$2,400,000 on December 2009 with interest paid semiannually at an annual rate of 5.625%; \$5,040,000 in December 2019 with interest payable semiannually at an annual rate of 6.00%; and \$7,560,000 in December 2029 with interest payable semiannually at an annual rate of 6.00%. The Medical Center is required to make sinking fund payments to be used for mandatory redemption of the Series 1999-B Bonds commencing with a payment of \$485,000 in December 2005 and continuing annually in increasing amounts through December 2029. The Medical Center is also required to maintain certain covenants under the Bond agreement including minimum debt service coverage.

ST. ELIZABETH MEDICAL CENTER

Notes to Financial Statements

December 31, 2009 and 2008

- (c) In June 2006, the Medical Center obtained additional financing of \$14,000,000 through the placement of Oneida County Industrial Development Agency Multi-Mode Variable Rate Civic Facility Revenue Bonds Series 2006-A (the Series 2006-A Bonds). The proceeds were used primarily to renovate and construct the new emergency department, kitchen and cafeteria. The 2006-A Bonds were issued on a parity basis with the 1999-A and 1999-B bonds. The Series 2006-A bonds mature in June 2026. Interest is paid monthly based on the Securities Industry and Financial Markets Association Municipal Swap Index. The average rate was 0.36% and 3.43% at December 31, 2009 and 2008, respectively. The Medical Center is required to make sinking fund payments to provide for the redemption of the Series 2006-A Bonds commencing with a \$115,000 payment in 2008 and continuing annually in increasing amounts through 2026. The Medical Center voluntarily made \$330,000 and \$1,685,000 in sinking fund payments during 2009 and 2008, respectively. As further security for the Bonds, the Medical Center has entered into a Reimbursement Agreement with HSBC Bank USA, pursuant to which the Bank has issued an irrevocable direct-pay letter of credit aggregating the principal amount. The letter of credit will expire on June 21, 2013. The Medical Center is also required to maintain certain covenants under the Bond agreement including minimum debt service coverage and minimum day's cash on hand.

Under the Indenture of Trust for the Series 1999-A, Series 1999-B, and Series 2006-A Bonds, the Medical Center is required to maintain certain levels of reserve accounts with the trustee. Amounts under this agreement have been classified as either current or noncurrent based upon the anticipated release date of such funds or contractual obligation and are as follows at December 31:

	<u>2009</u>	<u>2008</u>
Current assets whose use is limited:		
Bond Interest Fund – Series 1999-A Bonds	\$ 169,634	168,607
Bond Interest Fund – Series 1999-B Bonds	215,759	216,931
Project Fund – Series 1999-A Bonds	1,589	1,589
Project Fund – Series 2006-A	<u>1,473</u>	<u>20,957</u>
	<u>\$ 388,455</u>	<u>408,084</u>
Noncurrent assets whose use is limited:		
Debt Service Reserve Fund-Series 1999-A Bonds	\$ <u>2,672,643</u>	<u>2,616,407</u>
	<u>\$ 2,672,643</u>	<u>2,616,407</u>

The Series 1999-A Bonds, Series 1999-B Bonds, and Series 2006-A Bonds, described in (a), (b), and (c), respectively, are secured by a mortgage lien on the property, plant, and equipment of the Medical Center, as well as a security interest in assets whose use is limited.

ST. ELIZABETH MEDICAL CENTER

Notes to Financial Statements

December 31, 2009 and 2008

Aggregate sinking fund requirements for the next five years are as follows:

Year:		
2010	\$	1,295,000
2011		1,365,000
2012		1,430,000
2013		1,505,000
2014		1,585,000

(9) Leases

The Medical Center leases a building which houses the Medical Center's Women and Children's Health Center and finance department, under a capital lease which expires in 2022. Interest is calculated on the capital lease at an annual rate of 10.72%. Additionally, during 2008 the Medical Center entered into a capital lease for certain equipment which expires in 2012. Interest is calculated on the capital lease at an annual rate of 4.55%. Future minimum payments are as follows:

2010	\$	774,620
2011		774,620
2012		774,620
2013		258,270
2014 and thereafter		<u>1,382,076</u>
Total minimum lease payments		3,964,206
Less amount representing interest		<u>1,058,218</u>
Present value of minimum lease payments		2,905,988
Less current installments of obligations under capital leases		<u>632,634</u>
Obligations under capital leases, excluding current installments	\$	<u><u>2,273,354</u></u>

(10) Temporarily and Permanently Restricted Net Assets

Temporarily restricted net assets, consisting of cash and cash equivalents, short-term investments, and interest in net assets of St. Elizabeth Medical Center Foundation, Inc. at December 31, are available for the following purposes:

	<u>2009</u>	<u>2008</u>
Plant replacement and expansion	\$ 124,106	122,674
Emergency department project	679,156	1,069,779
Scholarships	84,568	83,163
	<u>\$ 887,830</u>	<u>1,275,616</u>

Permanently restricted net assets consist of long-term investments to be held in perpetuity, the income from which is expendable for School of Nursing scholarships.

ST. ELIZABETH MEDICAL CENTER

Notes to Financial Statements

December 31, 2009 and 2008

(11) Related Organizations

(a) *Motherhouse of the Sisters of the Third Franciscan Order*

Loans payable to the Motherhouse of the Sisters of the Third Franciscan Order have been interest free since January 1, 1994 and have not been required to be repaid prior to December 31, 2002. In 2002, the Medical Center entered into an agreement with the Motherhouse of the Sisters of the Third Franciscan Order which established repayment terms for the loan payable. Under the terms of the agreement, beginning in January 2003, the Medical Center is required to make monthly principal payments of \$6,536 through 2007, \$10,894 from 2008 through 2017, and \$15,251 from 2018 through 2022. The agreement provides for interest at 5% of the remaining outstanding balance only in the event that timely principal payments are not made and the Medical Center does not cure the untimely principal payment within 30 days.

(b) *St. Elizabeth Medical Center Foundation, Inc.*

The Foundation is an affiliated not-for-profit organization that receives and administers gifts and bequests for the benefit of the Medical Center.

(c) *Healthcare Underwriters Mutual Risk Management Group*

The Medical Center is one of five members of the Healthcare Underwriters Mutual Risk Management Group (the Group). The Group is an unincorporated association of healthcare providers in the upstate region of New York State and was organized under a trust agreement for the purpose of establishing a workers' compensation self-insurance group. The Group is governed by a board of trustees consisting of one trustee for each member. Members of the Trust are jointly and severally liable for Group activities and liabilities.

The Medical Center makes annual payments to the Group for workers' compensation risk coverage based on its relative claims experience in relation to the total Group. Payments amounted to approximately \$1,405,000 and \$1,499,000 under this arrangement in 2009 and 2008, respectively.

(12) Joint Venture for Cardiac Services

During 1997, the Medical Center and St. Luke's Memorial Hospital Center (now known as Faxton St. Luke's Healthcare) entered into an agreement for the purpose of establishing and maintaining a joint cardiac services program. As a part of the joint venture, the two hospitals formed the Mohawk Valley Heart Institute, Inc. (MVHI), a not-for-profit corporation, primarily as a vehicle to control and monitor the quality of the joint program at the two hospitals. The services relating to the joint venture include cardiac surgery, coronary angioplasty, diagnostic cardiac catheterizations, and outpatient cardiac rehabilitation services.

ST. ELIZABETH MEDICAL CENTER

Notes to Financial Statements

December 31, 2009 and 2008

The activities relating to the joint operation occur in each of the hospitals' facilities based on patient need. The Medical Center shares in 70% of the profits and losses of the joint operation, irrespective of where the services are performed. All financial activities of the joint venture flow through the hospitals' operations, and the Medical Center's proportional share of the activities of the joint venture as of and for the years ended December 31 are incorporated into the accompanying financial statements as follows:

	<u>2009</u>	<u>2008</u>
Net patient service revenue	\$ 31,127,099	39,620,446
Operating expenses	<u>27,668,997</u>	<u>34,431,055</u>
Net income from joint operations	<u>\$ 3,458,102</u>	<u>5,189,391</u>

(13) Pension Plan

The Medical Center has a noncontributory defined benefit plan which covers substantially all employees. Benefits are based on compensation and years of service. The Medical Center uses the accrued benefit (unit credit) actuarial method to determine its funding requirements. In 2003, the Medical Center applied for and received a favorable determination that its defined benefit plan is that of a nonelecting church plan under Section 410(d) of the Internal Revenue Code. Prior to this point, the Medical Center's policy was to fund at least an amount necessary to satisfy the minimum funding requirements under ERISA. Under status as a church plan, the Medical Center may continue to contribute the minimum amounts calculated as if the plan were subject to ERISA funding requirements, although not required. For financial reporting purposes, the Medical Center uses the "projected unit credit method" which attributes an equal portion of total projected benefits to each year of employee service.

The Medical Center applies the provisions of FASB ASC Subtopic 715-30, *Compensation – Retirement Benefits, Defined Benefit Plans – Pension* (ASC Subtopic 715-30) which requires an employer to recognize the funded status (i.e. difference between the fair value of plan assets and projected benefit obligations) of its defined benefit pension plan as an asset or liability in its balance sheet and to recognize changes in that funded status in the year in which the changes occur through changes in unrestricted net assets.

Additional actuarial gains and losses that arise in subsequent periods and are not recognized as net periodic pension cost in the same period will be recognized as a component of unrestricted net assets. These future actuarial gains and losses will be recognized as a component of net periodic pension cost on the same basis as the amounts recognized in unrestricted net assets at adoption of ASC Subtopic 715-30.

ST. ELIZABETH MEDICAL CENTER

Notes to Financial Statements

December 31, 2009 and 2008

The following tables present the changes in the Medical Center's plan benefit obligation and the fair value of the plan assets, and the funded status of the plan:

	<u>2009</u>	<u>2008</u>
Change in benefit obligation:		
Benefit obligation at beginning of year	\$ 61,448,207	54,313,458
Service cost	3,794,453	4,081,425
Interest cost	3,943,890	4,344,092
Actuarial loss	3,164,435	234,066
Benefits paid	<u>(1,319,950)</u>	<u>(1,524,834)</u>
Benefit obligation at end of year	<u>71,031,035</u>	<u>61,448,207</u>
Change in plan assets:		
Fair value of plan assets at beginning of year	26,522,984	30,730,892
Actual return (loss) on plan assets, net	4,550,950	(7,883,074)
Employer contributions	5,338,392	5,200,000
Benefits paid	<u>(1,319,950)</u>	<u>(1,524,834)</u>
Fair value of plan assets at end of year	<u>35,092,376</u>	<u>26,522,984</u>
Funded status	\$ <u><u>(35,938,659)</u></u>	<u><u>(34,925,223)</u></u>
Amounts recognized in the balance sheet, end of year:		
Accrued pension liability	\$ (35,938,659)	(34,925,223)
Unrestricted net assets:		
Net actuarial loss	\$ 22,871,448	21,982,375
Prior service costs	<u>456,531</u>	<u>517,650</u>
	\$ <u><u>23,327,979</u></u>	<u><u>22,500,025</u></u>

The components of periodic pension cost for the years ended December 31 is as follows:

	<u>2009</u>	<u>2008</u>
Service cost	\$ 3,794,453	3,675,140
Interest cost	3,943,890	3,475,274
Expected return on plan assets	(2,885,499)	(2,532,167)
Amortization of prior service cost	61,119	61,119
Amortization of net loss	<u>609,910</u>	<u>534,981</u>
Net periodic pension cost	\$ <u><u>5,523,873</u></u>	<u><u>5,214,347</u></u>

ST. ELIZABETH MEDICAL CENTER

Notes to Financial Statements

December 31, 2009 and 2008

Other changes in plan assets and benefit obligations recognized in unrestricted net assets in 2009 and 2008 are as follows:

	<u>2009</u>	<u>2008</u>
Net actuarial loss	\$ 889,073	10,739,061
Prior service credit	<u>(61,119)</u>	<u>(76,399)</u>
Total recognized in unrestricted net assets	\$ <u>827,954</u>	<u>10,662,662</u>
Total recognized in net periodic pension cost and unrestricted net assets	\$ <u>6,351,827</u>	<u>15,877,009</u>

The estimated amounts that will be amortized from unrestricted net assets into net periodic pension in 2010 are as follows:

Net actuarial loss	\$ 936,920
Prior service costs	<u>61,119</u>
	\$ <u>998,039</u>

The weighted average assumptions used to determine pension cost and benefit obligations at the Plan's measurement date (December 31) are as follows:

	<u>2009</u>	<u>2008</u>
Weighted average discount rate for net periodic pension cost	6.50%	6.50%
Weighted average discount rate for benefit obligations	6.25	6.50
Expected long-term return on plan assets	8.00	8.00
Rate of compensation increase	3.00	3.00

The Medical Center's defined benefit plan's investment objectives are to emphasize total return specifically through long-term growth of capital while avoiding excessive risk, and to achieve a balanced return of current income and modest growth of principal. In order to achieve these objectives, the Medical Center has established the following asset allocation guidelines:

<u>Asset class</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Preferred</u>
Large cap equity securities	30%	50%	40%
Small cap equity securities	—	15	10
International equity securities	—	15	10
Fixed income	30	60	40
Cash and equivalents	—	5	—

ST. ELIZABETH MEDICAL CENTER

Notes to Financial Statements

December 31, 2009 and 2008

The Medical Center's defined benefit plan weighted average asset allocations at December 31, by asset category, are as follows:

<u>Asset category</u>	<u>2009</u>	<u>2008</u>
Equity securities	53%	49%
Debt securities	36	41
International	11	10
	<u>100%</u>	<u>100%</u>

The following table presents the Medical Center's defined benefit pension plans' assets at December 31, 2009 that are measured at fair value on a recurring basis. The hierarchy and inputs to valuation techniques to measure fair value of the plan's assets are the same as outlined in note 5.

	<u>Level 1</u>	<u>Level 2</u>	<u>Total</u>
Cash and cash equivalents	\$ 2,043,527	—	2,043,527
U.S. Treasury obligations	3,637,623	—	3,637,623
U.S. government and agency	—	541,720	541,720
Mortgage-backed securities	—	1,211,448	1,211,448
Corporate bonds	—	5,191,150	5,191,150
Common stock	22,380,094	—	22,380,094
Equity mutual funds	86,814	—	86,814
	<u>\$ 28,148,058</u>	<u>6,944,318</u>	<u>35,092,376</u>

There are no plan assets included in Level 3 at December 31, 2009.

The Medical Center expects to contribute \$5.3 million to its defined benefit plan in 2010.

The following approximate benefit payments, which reflect expected future service, as appropriate, are expected to be paid:

<u>Year</u>	<u>Benefit payments</u>
2010	\$ 1,761,000
2011	1,952,000
2012	2,245,000
2013	2,596,000
2014	3,007,000
2015 – 2018	21,755,000

ST. ELIZABETH MEDICAL CENTER

Notes to Financial Statements

December 31, 2009 and 2008

(14) Medical Malpractice Insurance

Since June 17, 1986, the Medical Center's insurance for medical malpractice risk is covered under a claims-made policy. If the claims-made policy is not renewed or replaced with equivalent insurance, claims based on occurrences since June 17, 1986 but reported subsequent to such a change will be uninsured. The Medical Center changed to a new insurance provider in 1998. The new coverage also is claims-made and has similar terms as compared to the previous policy. Claims from June 17, 1986 to the effective date of the current policy are covered. The Medical Center has a right under its present policy to acquire extended coverage if it decides to terminate its claims-made coverage.

In the ordinary course of operations, the Medical Center is named as a defendant in various lawsuits, or events occur which could lead to litigation, claims, or assessments. Although the outcome of such matters cannot be predicted with certainty, management believes that insurance coverage is sufficient to cover current or potential claims, or that the final outcomes of such matters will not have a material adverse effect on the financial position of the Medical Center.

(15) Functional Expenses

The Medical Center's unrestricted expenses by function for the years ended December 31 are as follows:

	<u>2009</u>	<u>2008</u>
Healthcare services	\$ 163,363,868	152,456,987
General and administrative	35,863,902	34,829,974
	<u>\$ 199,227,770</u>	<u>187,286,961</u>

(16) Subsequent Events

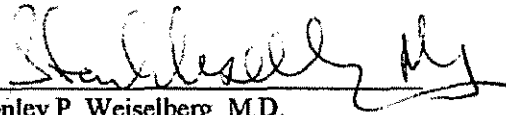
Effective December 31, 2009, the Medical Center adopted FASB ASC Topic 855, *Subsequent Events*, which establishes principles and requirements for subsequent events and applies to accounting for and disclosure of subsequent events not addressed in other applicable generally accepted accounting principles. The Medical Center evaluated events subsequent to December 31, 2009 and through April 28, 2010, the date on which the financial statements were approved for issuance.

AFFIDAVIT

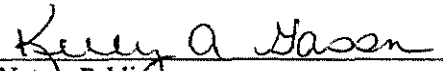
STATE OF NEW YORK)
) ss.:
COUNTY OF ONEIDA)

THE UNDERSIGNED affirms and agrees as follows:

1. The undersigned owns an 8.57148% indirect ownership interest in Mohawk Valley EC, LLC (the "Company") which has filed a CON Application to construct and operate a single specialty ambulatory surgery center at 116 Business Park Drive, Utica, New York (the "Center")
2. The Company will finance the construction the Center pursuant to a mortgage loan that will have a 10 year term and will be amortized over 15 years.
3. At the end of the 10 year term the loan will have an unpaid balance (the "Balloon") which the Company intends to refinance.
4. If the Company is unable to refinance the Balloon on terms acceptable to the Department of Health the undersigned commits to use his personal assets to fund 8.57148% of the Balloon.


Stanley P. Weiselberg, M.D.

Subscribed and sworn to before me
this 25 day of October, 2010.


Notary Public

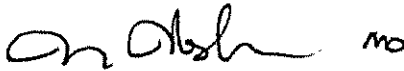
Kelly A. Gassner
Lic #01GA6043166
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 10-12-14

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Norman R. Neslin, M.D.

Subscribed and sworn to before me
this 25 day of October, 2010.



Notary Public

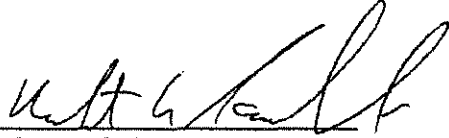
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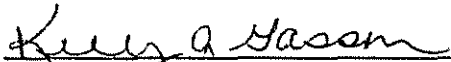
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Robert R. Pavelock, M.D.

Subscribed and sworn to before me
this 25th day of October, 2010.



Notary Public

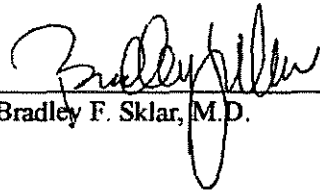
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 Bradley F. Sklar, M.D.

Subscribed and sworn to before me
this 25th day of October, 2010.



 Notary Public

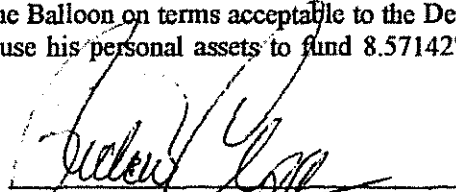
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AFFIDAVIT

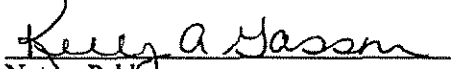
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Richard Cherpak, M.D.

Subscribed and sworn to before me
this 25th day of October, 2010.


Notary Public


Kelly A. Gassner
Lic #01GA6043166
Notary Public in the State of New York
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My Commission Expires 6-12-14

AFFIDAVIT


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 Brett Gandhi, M.D.

Subscribed and sworn to before me
this 25th day of October, 2010.


 Notary Public

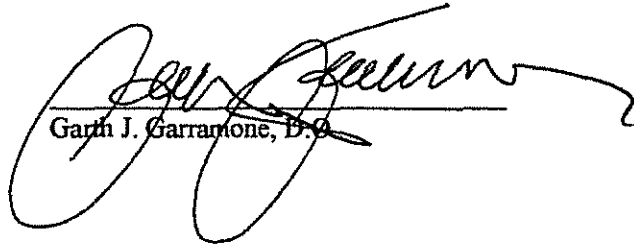
Kelly A. Gassner
 Lic #01GA6043166
 Notary Public in the State of New York
 Appointed in Oneida County
 My Commission Expires 6-2-14

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF ONEIDA)


THE UNDERSIGNED affirms and agrees as follows:

1. The undersigned owns an 8.57142% indirect ownership interest in Mohawk Valley EC, LLC (the "Company") which has filed a CON Application to construct and operate a single specialty ambulatory surgery center at 116 Business Park Drive, Utica, New York (the "Center").
2. The Company will finance the construction the Center pursuant to a mortgage loan that will have a 10 year term and will be amortized over 15 years.
3. At the end of the 10 year term the loan will have an unpaid balance (the "Balloon") which the Company intends to refinance.
4. If the Company is unable to refinance the Balloon on terms acceptable to the Department of Health the undersigned commits to use his personal assets to fund 8.57142% of the Balloon.



Garth J. Garramone, D.O.

Subscribed and sworn to before me
this 25th day of October, 2010.



Notary Public

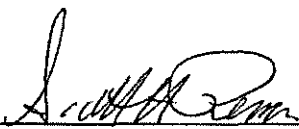
Kelly A. Gassner
Lic #01GA6043166
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 6-12-14

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF ONEIDA)

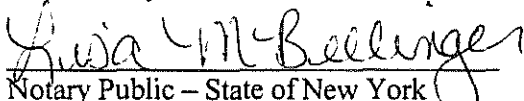
THE UNDERSIGNED affirms and agrees as follows:

1. The undersigned is the President/CEO of Faxton-St. Luke's Healthcare (the "Hospital").
2. The Hospital owns a 20% membership interest in Mohawk Valley EC, LLC (the "Company") which has filed a CON Application to construct and operate a single specialty ambulatory surgery center at 116 Business Park Drive, Utica, New York (the "Center").
3. The Company will finance the construction the Center pursuant to a mortgage loan that will have a 10 year term and will be amortized over 15 years.
4. At the end of the 10 year term the loan will have an unpaid balance (the "Balloon") which the Company intends to refinance.
5. If the Company is unable to refinance the Balloon on terms acceptable to the Department of Health the Hospital commits to use its corporate resources to fund 20% of the Balloon.



 Scott H. Perra, FACHE
 President/CEO

Subscribed and sworn to before me
this 25th day of October, 2010.



 Notary Public – State of New York
 Appointed in Oneida County
 My commission expires: 10 105 2013

LISA M. BELLINGER
 Notary Public, State of New York
 Appointed in Oneida County
 My Commission Expires: 10-05-2013

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF ONEIDA)

THE UNDERSIGNED affirms and agrees as follows:

1. The undersigned is the President and Chief Executive Officer of St. Elizabeth Medical Center (the "Hospital").
2. The Hospital owns a 20% membership interest in Mohawk Valley EC, LLC (the "Company") which has filed a CON Application to construct and operate a single specialty ambulatory surgery center at 116 Business Park Drive, Utica, New York (the "Center").
3. The Company will finance the construction of the Center pursuant to a mortgage loan that will have a 10 year term and will be amortized over 15 years.
4. At the end of the 10 year term the loan will have an unpaid balance (the "Balloon") which the Company intends to refinance.
5. If the Company is unable to refinance the Balloon on terms acceptable to the Department of Health the Hospital commits to use its corporate resources to fund 20% of the Balloon.

Robert Ketchum

Subscribed and sworn to before me
this 22 day of October, 2010.

Traci A. Boris
Notary Public

TRACI A. BORIS
Notary Public, State of New York
No. 02B06070761
Qualified in Oneida County
Commission Expires April 21, 20 11

092142 Mohawk Valley EC

Program Summary

The applicant will enter into a transfer and affiliation agreements for emergency and back-up services with Faxton St. Luke's Healthcare, which is 1.5 miles or five minutes in travel time from the Center and St. Elizabeth's Medical Center, which is 1.6 miles or 5 minutes in travel time from the Center.

Contingencies

Submission of an executed transfer and affiliation agreement that is acceptable to the Department, with a local acute care hospital. [HSP]

Submission of a staffing plan, acceptable to the Department, confirming that staff of the Center will be separate and distinct from staff of other entities. [HSP]

Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities. [HSP]

Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space. [HSP]
Submission of documentation, acceptable to the Department, that the clinical space will be used exclusively for this purpose. [HSP]

Submission of an agreement, acceptable to the Department, regarding the provision of quality oversight functions. [HSP]

Submission of evidence of a protocol ensuring all physicians practicing at the ASC commit, in writing, to maintain in good standing any responsibilities with all acute care hospitals where privileges have been granted. [HSP]

Programmatic Analysis

Services

This freestanding single specialty ambulatory surgery center proposes to provide surgical services in the areas of gastroenterology, utilizing four operating rooms. The Center will be in operation 7:00 a.m. to 3:30 p.m. Monday through Friday. The Center intends to extend its hours as necessary to accommodate patient needs.

The list of procedures provided reflects the proposed services are consistent with the specialties of the physicians that have expressed interest in practicing at this Center. The Center intends to review this list annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

Staffing

Staffing will consist of 19.7 FTEs including registered nurses and technicians, under the supervision of the Center's medical director, Garth Garramone. Staffing is expected to increase to 21.7 FTEs by the third year of operation. Anesthesia services will be provided by board-certified or board-eligible anesthesiologists.

Back-up Support Services and Off-hour Coverage

Emergency, in-patient and back-up support services will be provided by Faxton St. Luke's Healthcare which is 1.5 miles and five minutes in travel time from the Center and St. Elizabeth's Medical Center, which is 1.6 miles or 5 minutes in travel time from the Center. Negotiations have been initiated. An answering service, with access to the surgeon who performed the surgery or his/her on call physician, will be provided to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform with generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements. In addition, the applicant indicates the Center intends to receive accreditation from either the Accreditation Association of Ambulatory Health Care or Joint Commission on Accreditation of Healthcare Organizations within two years after opening.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Managing Member's Responsiveness to Community Need

The Managing Members, each with 14.2857% ownership, are as follows:

Richard Cherpak, M.D.
Brett Gandhi, M.D.
Garth Garramone, DO
Norman Neslin, M.D.
Robert Pavelock, M.D.
Bradley Sklar, M.D.
Stanley Weiselberg, M.D.

Characteristics of the governing body reflect responsiveness to community need in the use of a patient satisfaction measurement tool that will provide continuous,

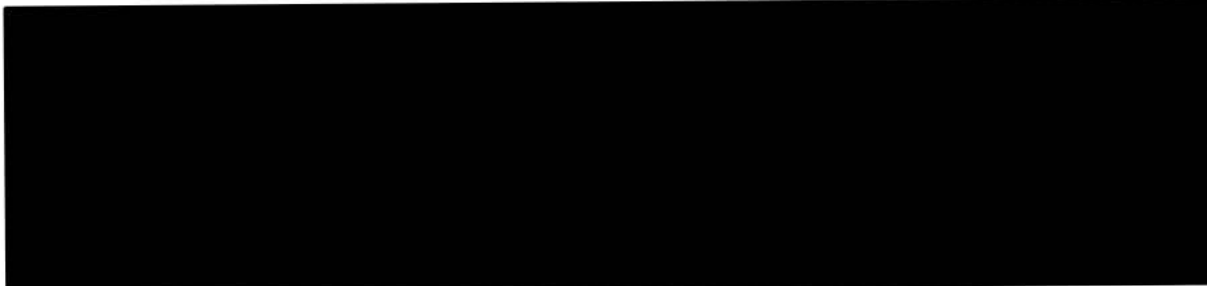
ongoing feedback to the organization for the total quality management improvement program and planning discussions. Input from members of the medical staff and patients will provide the basis for additional services and freed or reduced fee care to eligible patients.

Character and Competence

Staff from the Division of Certification and Surveillance reviewed the disclosure information submitted by the individuals 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 and relatives' ownership interest in other health care facilities. This review revealed the following:

MVEC Holdings, LLC (60% member)

Name	Work History/Affiliated Facility
Richard Cherpak, M.D.	Physician in private practice since 1993.
Brett Gandhi, M.D.	Physician in private practice since 1994.
Garth Garramone, D.O.	Physician in private practice since 2004.
Norman Neslin, M.D.	Physician in private practice since 1987.
Robert Pavelock, M.D.	Physician in private practice since 1987.
Bradley Sklar, M.D.	Physician in private practice since 1993.
Stanley Weiselberg, M.D.	Physician in private practice since 1984.



St. Elizabeth Medical Center (20% Member)

This is the board of the St. Elizabeth's Medical Center, which is the operator of both the hospital and the affiliated Certified Home Health Agency, named St. Elizabeth Certified Home Care.

Name	Affiliated Facility	Work History
Richard Zweifel		CPA with Gruver, Zweifel & Scott, LLP
Catherine McDonough Cominsky	Sitrin Health Center	Adjunct Professor at Utica College since 1998.
Ramond Meier		Attorney with Bond, Schoeneck & King, PLLC since 2007.
Gregory Evans		President and CEO of Indium Corporation of America since

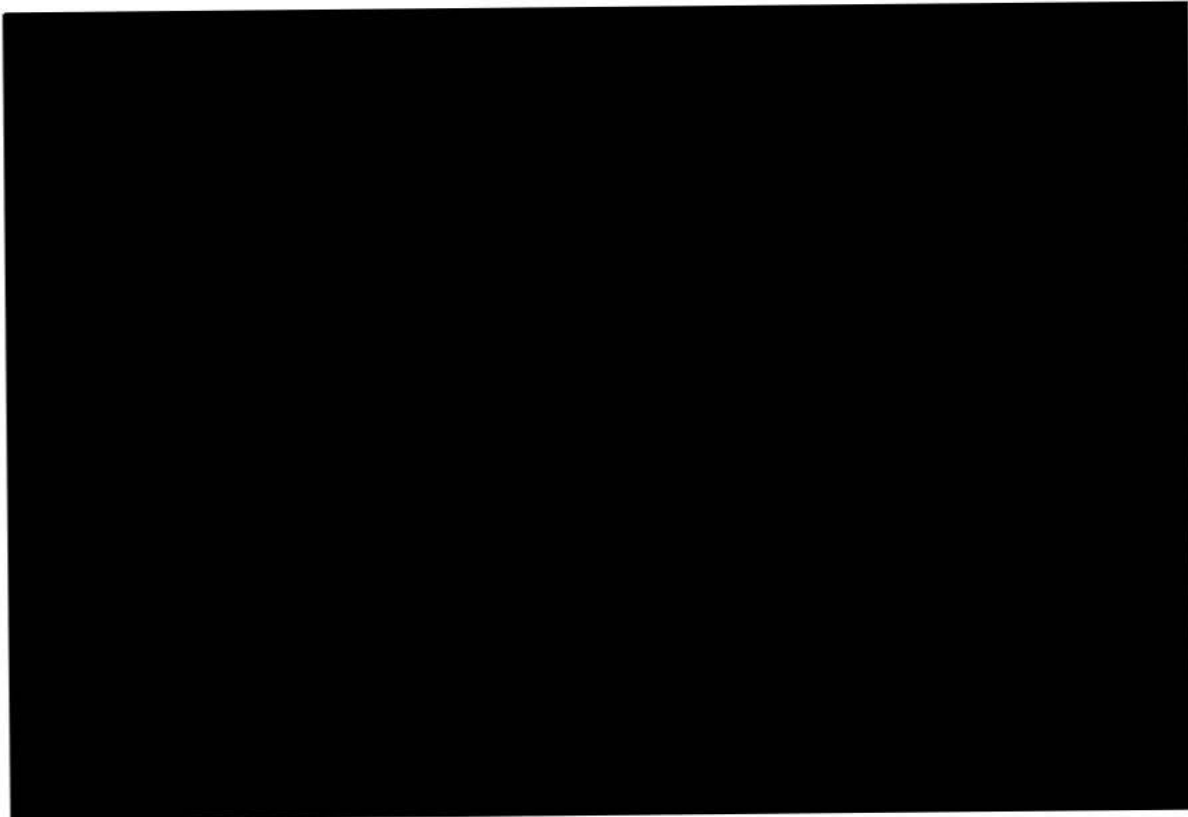
		1981 (manufacturing company).
Norman Siegel		Judge for the New York State Court of Claims since 2000.
Richard Ketcham	Mohawk Valley Heart Institute	President and CEO of St. Elizabeth Medical Center since September 2010. President and CEO of Brook Memorial Hospital from 1986 to 2009.
Eric Yoss		Physician in private practice since 1988 and the Medical Director of Critical Care Services and the Medical Director of Respiratory Services at St. Elizabeth's Hospital.
Harrison Hummell III		CEO and President of Hummell's Office Plus.
Steven Williams, M.D.		Physician in private practice since 1998.
Marianne Gaige	United Cerebral Palsy	President and CEO of Cathedral Corporation (printing company)
Fred Talarico, M.D.		Physician in private practice since 1986.
Donna McGartland		Director of Ministry and Life Transitions fro Sisters of St. Francis and the Neumann Communities.
Alfred Matt		President of Matt Brewing Company.

Disclosures

All board members of St. Elizabeth Medical Center disclosed that: "In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976."

In addition in July of 2001, St. Elizabeth Medical Center entered into a settlement agreement with the United States in connection with an investigation into Medicare Claims submitted by St. Elizabeth Medical Center for certain clinical laboratory outpatient services from January 1989 to December 31, 1993. The case involved recommendations made by a consulting firm, which were relied upon by St. Elizabeth Medical Center. The allegations were settled, without admission with respect to any issue of law or fact for \$227,000. The claims for which the investigation and settlement pertained were prior to the service of any members of the existing Board of Trustees, however, the finalization of the

investigation and the settlement took place during the Board service of Mr. Norman Siegel and Dr. Eric Yoss.



Faxton St. Luke's Healthcare (20% Member)

In addition to the affiliated facilities listed in the table below, all of the board members listed also serve as board members for the following entities:

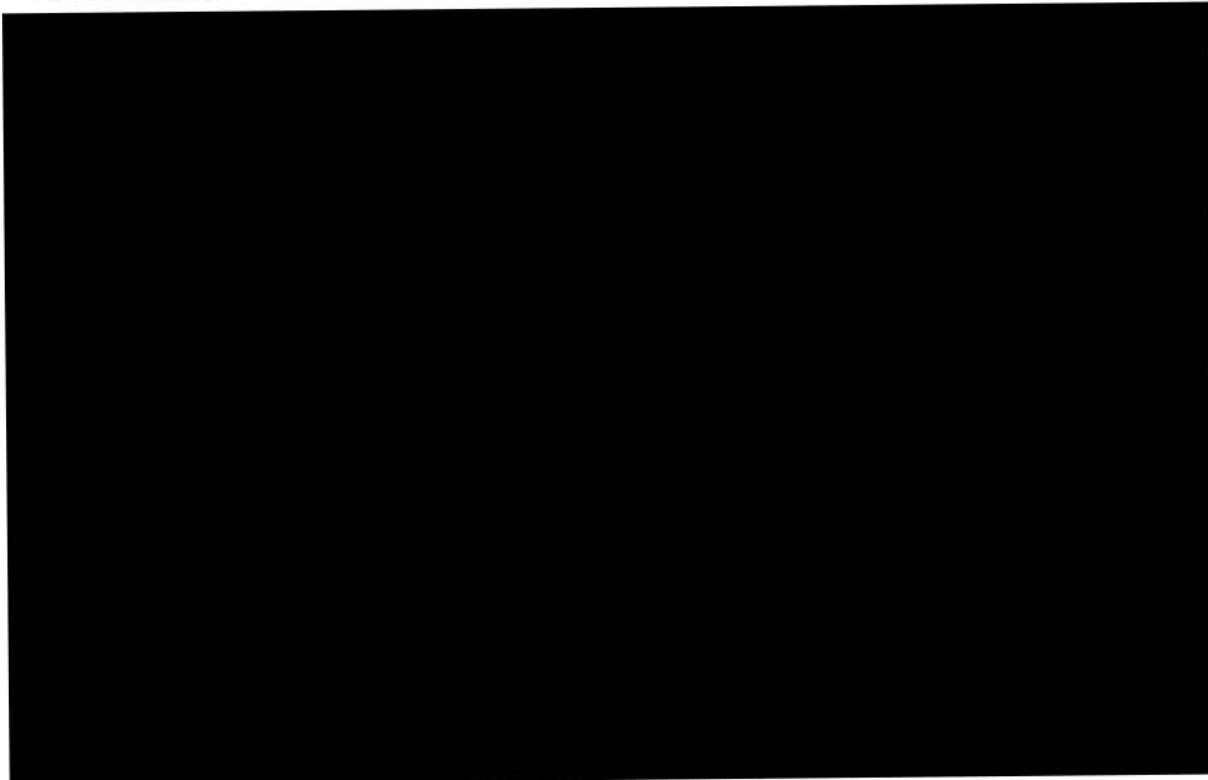
- St. Luke's Home Residential Health Care Facility, Inc.
- Senior Network Health, LLC
- Mohawk Valley Home Care, LLC
- Visiting Nurse Association of Utica and Oneida County, Inc.

Name	Affiliated Facility	Work History
Domenic Aiello		Physician in private practice.
Esther Bankert		Provost of the State University of New York Institute of Technology since 2009.
Sidney Blatt		Physician in private practice since 1976.
Martin Bull	<ul style="list-style-type: none">• Folts Home, Inc.• Resource Center for Independent Living, Inc.	Secretary and Treasurer for Bull Bros., Inc. (petroleum distribution, convenience stores, and property management corporation)
Joan Compson	Mohawk Valley Heart	Chief Financial Officer for

	Institute	Carbone Auto Group (auto dealership, management and realty company)
Leroy Cooley, M.D.		Physician in private practice since 1980.
John Crossley		Administrator at the Utica School of Commerce since 1968.
James Frederick, M.D.		Physician in private practice since 2000 and is an employee of Faxton St. Luke's Hospital.
Gary Gildersleeve		Associate Executive Director for Upstate Cerebral Palsy from 2003 until his retirement in 2008.
Todd Hutton		President and CEO of Utica College since 1998.
Karen Leach		Vice President for Administration and Finance at Hamilton College since 2001.
Christopher Max, M.D.		Physician in private practice.
Gregory McLean	<ul style="list-style-type: none"> • The House of the Good Shepherd • Presbyterian Homes and Services 	President of Caruso McLean and Company, Inc. (investment advising company)
Roger McReynolds		Vice President for Performance Improvement at Faxton St. Luke's Healthcare since 2007.
Michael Papparone		President and CEO of ECR International (HVAC manufacturing company) since 2008.
William Parker, M.D.		Physician employed by Faxton St. Luke's Healthcare since 2001.
Scott Perra	<ul style="list-style-type: none"> • Hospice and Palliative Care • Mohawk Valley Heart Institute 	President and CEO of St. Luke's Healthcare since 2009.
James Stewart	Presbyterian Home	President and CEO of Stewart Associates, LLC (insurance brokerage and consulting company) since 1999.
Stephen Sweet	Mohawk Valley Heart Institute	Owner of Sweet Products, LLC (distribution company) since 1993.
Richard Tantillo		Vice President for Communications and

		Development at Hamilton College since 1994.
Bonnie Woods		Trust Executive for Bank of America since 1991.

Disclosures



Associated Facility Histories

The individuals above disclosed affiliations as noted, either personally or by any member of their immediate family. The 10 year surveillance history of these facilities was reviewed. Sources of information include the files, records, and reports found in the Division of Certification and Surveillance and Office of Long Term Care.

Enforcement Histories of Applicant and Associated Facilities

Facility	Year	Fine
Faxton St. Lukes Hospital	2003	\$20,000 for failure to adequately limit a physician's practice.
St. Elizabeth Medical Center	2005	\$4,000 for an incident related to wrong sided surgery.
St. Elizabeth Certified Home Care	2007	\$10,000 with \$5,000 of that amount suspended contingent upon maintenance of compliance for three years.
St. Luke's Home Residential Health Care Facility	2001	\$2,000 for deficiencies related to quality of care

St. Luke's Home Residential Health Care Facility	2007	\$2,000 for deficiencies related to pressure sores and nutrition.
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For the enforcement actions listed above, the facilities implemented plans of correction that were monitored by Department staff following the enforcement action.

The review found that there were no cited violations that threatened or resulted in direct, significant harm to the health, safety, or welfare of patients, and that any of the relatively minor citations were promptly corrected with appropriate remedial action. Based on this information staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past ten years.

Recommendation

From a programmatic perspective, contingent approval is recommended.



STATE OF NEW YORK
DEPARTMENT OF HEALTH

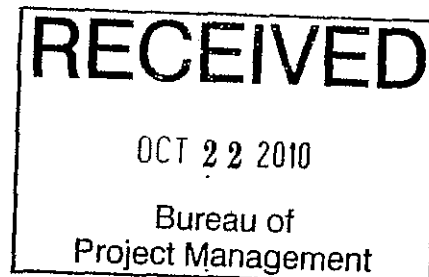
433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

October 22, 2010

Ms. Ann Gormely
Consultant
Empire Health Advisors
60 Railroad Place, Suite 101
Saratoga Springs, NY 12866



Re: 092142 Mohawk Valley EC, LLC
(Oneida County)
Establish/construct a single-specialty
ASC providing endoscopy at 116 Business Park Drive
Utica, NY. Revised: October 20, 2010 – Add Faxton St. Luke's
Healthcare and St. Elizabeth Medical Center to ownership
Each with 20% interest; increase in Total Project Costs.

Dear Ms. Gormley:

Review of the above application has revealed the need for the additional information requested in the enclosure from the Bureau of Financial Analysis. In preparing answers to the questions, please repeat each question and then provide the answer. Please submit your response within 5 days of the date of this letter in accordance with 10 NYCRR 710.3(a), as follows:

1. One copy to the Bureau of Financial Analysis, New York State Department of Health, Hedley Park Place, 6th Floor, 433 River Street, Troy, New York 12180-2299.
2. An original and eight copies of your response to Jeffrey Rothman, Director, Bureau of Project Management, New York State Department of Health, Hedley Park Place, 6th Floor, 433 River Street, Troy, New York 12180-2299.

Processing of your application by the Bureau of Financial Analysis cannot be completed until the information is received and reviewed. Also, if this project requires review by the State Hospital Review and Planning Council, such review may have to be delayed if the requested information is not received promptly (particularly if the Bureau of Financial Analysis does not receive a separate copy). Accordingly, you are encouraged to submit the response at your earliest opportunity. In this regard, be advised that a single faxed response to this request does not constitute a full and complete response.

If you have any questions on the information being requested, please contact the individual identified on the enclosure.

Sincerely,

Robert G. Schmidt, MHP
Acting Director, CON Review Group
Division of Health Facility Planning

Enclosure

092142 - Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center
(Oneida County)

The following questions have been prepared by the Bureau of Financial Analysis.

If additional information is needed, please contact Bill Lindenman at (518) 402-0953.

1. Please provide 2009 Certified Financial Statements for Faxton-St. Luke's Healthcare and Subsidiaries. If applicable, address the reason(s) for the losses and steps implemented to improve operations.
2. Please provide 2009 Certified Financial Statements for St. Elizabeth Medical Center. If applicable, address the reason(s) for the losses and steps implemented to improve operations.
3. Please provide affidavits from the members of the applicant to fund the balloon payment on the proposed mortgage should terms acceptable to the Department of Health be unavailable at the time of refinancing:
 - The affidavits from the following members should commitment to using their personal assets for this purpose:

Stanley P. Weiselberg, M.D.
Norman R. Neslin, M.D.
Robert R. Pavelock, M.D.
Bradley F. Sklar, M.D.
Richard Cherpak, M.D.
Brett Gandhi, M.D.
Garth J. Garramone, D.O.
 - The affidavits from Faxton-St. Luke's Healthcare and St. Elizabeth Medical Center can commit to using corporate resources

Schedule 2A - Personal Qualifying Information

Name of Individual:

Sidney J. Blatt

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Blatt		Sidney		J
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Slocum Dickson Medical Group				
CITY	STATE	ZIP CODE	TELEPHONE	
New Hartford	NY	13413	315-798-1508	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Northwestern Medical School	Chicago, IL	1968	1969	MD	1969

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Physician # 127059	State of NY	1976	

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Slocum Dickson Medical Group			
STREET ADDRESS OF EMPLOYER			
1749 Burrstone Road			
CITY		STATE	ZIP CODE
New Hartford		NY	13413
DATES OF EMPLOYMENT		FROM	TO:
		1976	Present
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
1992	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13503	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	St. Luke's Home Residential Health Care Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

New York State Department of Health
Certificate of Need Application

Schedule 2A

From	To	Name of Facility	Address of Facility	Type of Facility
1976	Present	Slocum Dickson Medical Group	1729 Burrstone Road, New Hartford, NY	Medical Group

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes X** **No**

If "Yes, Please provide the following information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? **Yes X** **No**

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to <u>malpractice</u> , fraud or breach of fiduciary responsibility	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:

GIVE ANY FURTHER DETAILS
Question #6: Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.

8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p> </p>	
<p>Have you ever been in a position that required a fidelity bond? Were any claims made against that bond? If "Yes", provide details below</p>	
<p> </p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	
<p>If "Yes", provide details below</p>	

New York State Department of Health
Certificate of Need Application

Schedule 2A

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X <i>Sidney J. Blatt</i>	10/6/2010
PRINT OR TYPE NAME	
Sidney J. Blatt, M.D.	
TITLE	
Physician	

NOTARY	DATE
<i>Margaret A. Kiblish</i>	10/6/2010

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Sidney J. Blatt, M.D.

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.


Statement of Business Associations with Health Facilities


I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

--

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X 	10/6/2010
PRINT OR TYPE NAME	
Sidney J. Blatt, MD	
TITLE	

NOTARY	DATE
	10/6/2010

MARGARET A. KEBLISH
 Notary Public, State of New York
 No. 01KE6029261
 Qualified in Oneida County
 Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Martin Bull

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Bull		Martin		D
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Bull Bros., Inc				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	New York	13502	315-797-7760	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Herkimer County Community College	Reservoir Road Herkimer, NY 13350	1977	1982	Lacking courses for degree	
American Management Association	1601 Broadway, New York, NY 10019	1984	1986	Management Program	1986

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Bull Bros., Inc.		Petroleum Distribution, Convenience Stores, and property management	
STREET ADDRESS OF EMPLOYER			
414 Trenton Ave.			
CITY		STATE	ZIP CODE
Utica		New York	13502
DATES OF EMPLOYMENT	FROM	TO:	
	May 1969	present	
POSITION/RESPONSIBILITIES			
Secretary – Treasurer Bull Bros., Inc.			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	St. Luke's Home Residential Healthcare Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13503	Hospital
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH Office of Managed Care	

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2000	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

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From	To	Name of Facility	Address of Facility	Type of Facility
1982	1988	Folts Home, Inc.	104 N Washington St. Herkimer, NY 13350	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
1997	1999	Resource Center for Independent Living, Inc.	409 Columbia Street Utica, New York 13502	A resource center for Independent living
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		1 Commerce Plaza Albany , NY 12210

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

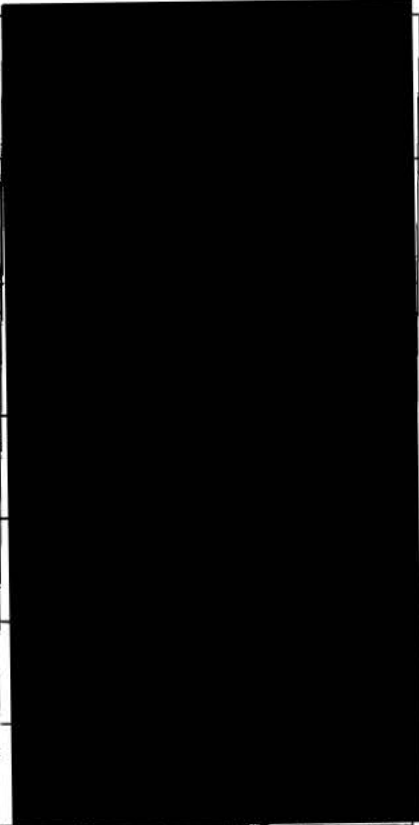
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d. Affirmative Statement of Qualifications

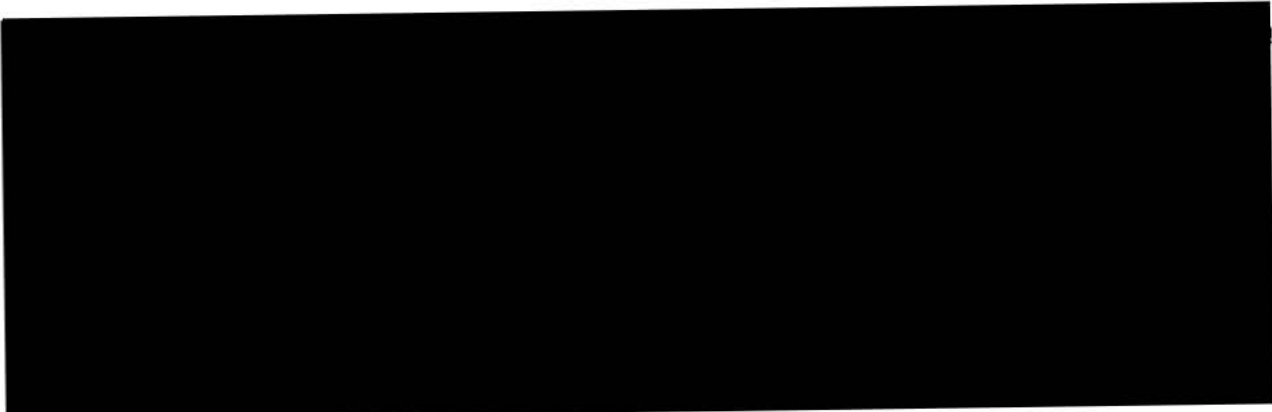
For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:



8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company.</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	

New York State Department of Health
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If "Yes", provide details below	

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE:
X <i>Martin Bull</i>	10-6-2010
PRINT OR TYPE NAME	
Martin Bull	
TITLE	
Board member Faxton St. Luke's Health Care, Inc.	

NOTARY	DATE
<i>Margaret A. Keblish</i>	10-6-2010

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
 Notary Public, State of New York
 No. 01KE6029261
 Qualified in Oneida County
 Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Martin Bull

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

--

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X <i>Martin D Bull</i>	10-6-2010
PRINT OR TYPE NAME	
Martin D Bull	
TITLE	
Board member Faxton St. Luke's Health Care, Inc.	

NOTARY	DATE
<i>Margaret A Keblish</i>	10-6-2010

MARGARET A. KEBLISH
 Notary Public, State of New York
 No. 01KE6029261
 Qualified in Oneida County 13
 Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Joan W. Compson

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Compson		Joan		W
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Carbone Auto Group, 5700 Horatio Street				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13502	315-724-4216 Ext. 228	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Syracuse University	Syracuse, NY	1959	1963	BS	1963
Syracuse University	Syracuse, NY	1981	1986	MBA	1986
Penn State University	State College, PA	1963	1964	MS	1967

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Certified Public Accountant License #062653-1	University of the State of NY Education Department	3/1990	6/30/2012 Reregister every 3 years

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Carbone Auto Group		14 Auto Dealerships, Management Co & Realty Companies	
STREET ADDRESS OF EMPLOYER			
5700 Horatio Street			
CITY		STATE	ZIP CODE
Utica		NY	13502
DATES OF EMPLOYMENT	FROM	TO:	
	4/1/1991	Present	
POSITION/RESPONSIBILITIES			
Chief Financial Officer (C.P.A.)			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2000	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Article 28 Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Director, Past Chair, Vice Chair, & Treasurer		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2006	2009	St. Luke's Home Residential Healthcare Facility Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
8/2010	Present	Mohawk Valley Heart Institute	2209 Genesee Street, Utica, NY 13501	
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board Member		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes X** **No**

If "Yes, Please provide the following information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? **Yes X** **No**

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
If Yes, provide details below:	

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9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	
f) was denied a certificate of authority or license to do business in any state?	
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	
Were any claims made against that bond? If "Yes", provide details below	
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	
If "Yes", provide details below	

New York State Department of Health
Certificate of Need Application

Schedule 2A

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X <i>Joan W. Compson</i>	9/30/10
PRINT OR TYPE NAME	
<i>Joan W. Compson</i>	
TITLE	
<i>Chair Emeritus</i>	
NOTARY	DATE
<i>Pamela Noti</i>	9/30/10

Has the original of this document been signed and notarized? Yes No

PAMELA NOTI
Notary Public, State Of New York
01NO4743362
Qualified In Oneida County
My Commission Expires Apr 30, 20 11

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Jean W. Campson

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE	DATE
X <i>Jean W. Campson</i>	9/30/10
PRINT OR TYPE NAME	
Jean W. Campson	
TITLE	
Chair Emeritus	
NOTARY	DATE
<i>Pamela Noti</i>	9/30/10

PAMELA NOTI
Notary Public, State Of New York
01NO4743362
Qualified In Oneida County
My Commission Expires Apr 30, 20 11

Schedule 2A - Personal Qualifying Information

Name of Individual:

Leroy H. Cooley, M.D.

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Cooley		Leroy		H.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Mohawk Valley Orthopedics, 1903 Sunset Ave				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13503	315-797-1212	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Middlebury College	Middlebury, VT	1968	1972	BA	1972
Upstate Medical Center	Syracuse, NY	1972	1976	MD	1976
University of Pittsburgh	Pittsburgh, PA	1976	1977		1977
Albany Medical Center	Albany, NY	1977	1980	Orthopedic Surgery Residency	1980
University of Penn	Philadelphia, PA	1980	1980	Sports Medicine Fellowship	1980

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Medical License No. 143660	NYS Department of Health	12/1980	
Board Certification	AAOS Chicago, IL		

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Mohawk Valley Orthopedics		Orthopedic Surgery	
STREET ADDRESS OF EMPLOYER			
1903 Sunset Ave			
CITY		STATE	ZIP CODE
Utica		NY	13503
DATES OF EMPLOYMENT	FROM	TO:	
	12/1980	Present	
POSITION/RESPONSIBILITIES			
Partner			
REASON FOR DEPARTURE			

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2000	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes** **No**

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? **Yes** **No**

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION

Question #5: Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.

8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	

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<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p> </p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p> </p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	
<p>If "Yes", provide details below</p>	

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X <i>Leroy H Cooley</i>	9-30-10
PRINT OR TYPE NAME	
<i>Leroy H Cooley</i>	
TITLE	
<i>Fulton St. Lukes Trustee</i>	

NOTARY	DATE
<i>Margaret U. Keblish</i>	9-30-10

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Levon H Cooley MD


This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

I am paid by Fardon - St. Lukes for providing E.D. coverage.

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE:
X 	9-30-10
PRINT OR TYPE NAME:	
Levon H Cooley	
TITLE:	
Fardon - St. Lukes Trustee	

NOTARY:	DATE:
	9-30-10

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

John Crossley

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Crossley		John		
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Utica School of Commerce, 201 Bleecker Street				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13501	315-733-2307	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Utica College	Utica, NY	1958	1962	BS	1962

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Real Estate Broker 10351202280	NYS Department of State	10/29/2009	10/29/2011

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Utica School of Commerce		Business College	
STREET ADDRESS OF EMPLOYER			
201 Bleecker Street			
CITY		STATE	ZIP CODE
Utica		NY	13501
DATES OF EMPLOYMENT	FROM	TO:	
	7/1/1968	Present	
POSITION/RESPONSIBILITIES			
Administration			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
1998	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13503	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	St. Luke's Home Residential Health Care Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

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d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION

Question #5: Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.

8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	


<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p> </p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p> </p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	
<p>If "Yes", provide details below</p>	

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE: 	DATE: 9/29/10
PRINT OR TYPE NAME: John L. Crossley	
TITLE: DIRECTOR	

NOTARY: 	DATE: 9/29/10
---	------------------

Has the original of this document been signed and notarized? Yes No

CECILIA A. GIBBS
Notary Public, State of New York
Qualified in Oneida County
Reg. #01G16027202
My Commission Expires 6/28/20 11

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

JOHN L. CROSSLEY

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE	DATE
<i>John L. Crossley</i>	9/29/10
PRINT OR TYPE NAME	
JOHN L. CROSSLEY	
TITLE	
Director	

NOTARY	DATE
<i>Cecilia A. Gibbs</i>	9/29/10

CECILIA A. GIBBS
Notary Public, State of New York
Qualified in Oneida County
Reg. #01G16027202
My Commission Expires 6/28/2011

Schedule 2A - Personal Qualifying Information

Name of Individual:

James E. Frederick, M.D.

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Frederick		James		E.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
Faxon St. Luke's Healthcare, Adirondack Community Physicians (ACP) Medical Group				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13503	315=624-8800	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]				
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
University of PA	Philadelphia, PA	1970	1974	BA	1974
Thomas Jefferson University	Philadelphia, PA	1974	1978	MD	1978

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Physician #146667	New York State		

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Faxton St. Luke's Healthcare		Hospital	
STREET ADDRESS OF EMPLOYER			
1656 Champlin Ave			
CITY		STATE	ZIP CODE
Utica		NY	13502
DATES OF EMPLOYMENT	FROM	TO:	
	2000	Present	
POSITION/RESPONSIBILITIES			
Physician			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
1995	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13503	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	St. Luke's Home Residential Health Care Facility, Inc.	1650 Champlin Ave, Utica, NY 13503	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: NONE			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency	Address of Licensing Agency	

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency	Address of Licensing Agency	

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency	Address of Licensing Agency	

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency	Address of Licensing Agency	

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility

Office Held/Nature of Interest	Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes X** **No**

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? **Yes X** **No**

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION

Question #5: Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.

8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	

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<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p> </p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p> </p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	
<p>If "Yes", provide details below</p>	

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X <i>James E. Frederick</i>	9/30/10
PRINT OR TYPE NAME	
JAMES E. FREDERICK	
TITLE	
Director	

NOTARY	DATE
<i>Margaret A. Keblish</i>	9/30/2010

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

JAMES E. FREDERICK

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

employee

Has the original of this document been signed and notarized? Yes No

SIGNATURE	DATE
X <i>James E. Frederick</i>	9/30/10
PRINT OR TYPE NAME	
JAMES E. FREDERICK	
TITLE	
director	

NOTARY	DATE
<i>Margaret A. Keblish</i>	9/30/2010

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Gary E. Gildersleeve

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Gildersleeve		Gary		E
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
DATE OF BIRTH (Month/Day/Year)	PLACE OF BIRTH (County/State)		Social Security #	
[REDACTED]	[REDACTED]		[REDACTED]	
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Syracuse University	Utica College, Utica, NY	1958	1962	MS	1962
Syracuse University	Syracuse, NY	1976	1982	MBA	1982

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
None			

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Upstate Cerebral Palsy		Human Services	
STREET ADDRESS OF EMPLOYER			
Mary Street			
CITY		STATE	ZIP CODE
Utica		NY	13501
DATES OF EMPLOYMENT		FROM	TO:
		2003	2008
POSITION/RESPONSIBILITIES			
Associate Executive Director			
REASON FOR DEPARTURE			
Retirement			

NAME OF EMPLOYER		TYPE OF BUSINESS	
Fairmont		Training	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
Frederick		PA	
DATES OF EMPLOYMENT	FROM	TO:	
	2001	2003	
POSITION/RESPONSIBILITIES			
Vice President			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
The Savings Bank of Utica		Savings Bank	
STREET ADDRESS OF EMPLOYER			
233 Genesee Street			
CITY		STATE	ZIP CODE
Utica		NY	13501
DATES OF EMPLOYMENT	FROM	TO:	
	1974	2001	
POSITION/RESPONSIBILITIES			
Senior Vice President			
REASON FOR DEPARTURE			
Retirement			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13503	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	St. Luke's Home Residential Health Care Facility, Inc.	1650 Champlin Ave, Utica, NY 13503	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility

Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

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d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

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6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	

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<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p> </p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p> </p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	
<p>If "Yes", provide details below</p>	

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X <i>[Signature]</i>	9/30/2010
PRINT OR TYPE NAME	
<i>Carlye Coldersteel</i>	
TITLE	
<i>Trustee</i>	

NOTARY	DATE
<i>Margaret A. Keblish</i>	9-30-2010

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

CARY E CONDESSO

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE	DATE
X <i>Cary E Condesso</i>	
PRINT OR TYPE NAME	
<i>CARY E CONDESSO</i>	
TITLE	
<i>Trustee</i>	

NOTARY	DATE
<i>Margaret A. Keblish</i>	<i>9-30-10</i>

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/20¹³

Schedule 2A - Personal Qualifying Information

Name of Individual:

Todd S. Hutton

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Hutton		Todd		S
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Utica College				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13502	315-792-3222	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Duke University	Durham, NC	1973	1982	PhD	1982
University of Florida	Gainesville, FL	1970	1973	M.Ed.	1973
Davidson College	Davidson, NC	1966	1970	A.B. (BA)	1970

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
None			

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Utica College		Higher Education	
STREET ADDRESS OF EMPLOYER			
1600 Burrstone Road			
CITY		STATE	ZIP CODE
Utica		NY	13502
DATES OF EMPLOYMENT	FROM	TO:	
	1998	Present	
POSITION/RESPONSIBILITIES			
President/CEO			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
8/1/98	Present	Utica College Health Ctr	1600 Burrstone Road	Student Health Center
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
President/CEO		Not a licensed facility		

From	To	Name of Facility	Address of Facility	Type of Facility
2005	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Secretary		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility, inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Secretary		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Secretary		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Secretary		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Secretary		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
Current	Civil Discrimination Lawsuit / FMLA	Utica, NY
PERSONS AND/OR FACILITIES INVOLVED		
Utica College; Todd Hutton, President/CEO; R. Barry White, CFO; Robert Grant, Controller		
GIVE ANY FURTHER DETAILS		
Lawsuit for alleged violation of FMLA for circumstances in 2002. From the time to time, Utica College has other lawsuits.		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

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9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE: <i>[Handwritten Signature]</i>	DATE
X	9/30/11
PRINT OR TYPE NAME	
TITLE	

NOTARY: <i>Jacqueline M. Lynch</i>	DATE
	9/30/10

Has the original of this document been signed and notarized? Yes No

JACQUELINE M. LYNCH
Notary Public in the State of New York
Qualified in Oneida County 01LY6044032
My Commission Expires June 26, 2014

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

TODD S. HUTTON

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

[Empty box for describing relationships and payment methods]

Has the original of this document been signed and notarized?

Yes

No

SIGNATURE:	DATE:
X <i>Todd Hutton</i>	9/30/10
PRINT OR TYPE NAME:	
TODD S. HUTTON	
TITLE:	
MUN Trustee	

NOTARY:	DATE:
<i>Jacqueline M. Lynch</i>	9/30/10

JACQUELINE M. LYNCH
Notary Public in the State of New York
Qualified in Oneida County 01LY6044032
My Commission Expires June 26, 2014

Schedule 2A - Personal Qualifying Information

Name of Individual:

Karen L. Leach

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Leach		Karen		L
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
Hamilton College, 198 College Hill Road				
CITY	STATE	ZIP CODE	TELEPHONE	
Clinton	NY	13323	315-859-4524	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Vassar College	Poughkeepsie, NY	1974	1978	BA	1978
Syracuse University	Syracuse, NY	1980	1985	MBA	1985

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Hamilton College		Collge	
STREET ADDRESS OF EMPLOYER			
198 College Hill Road			
CITY		STATE	ZIP CODE
Clinton		NY	13323
DATES OF EMPLOYMENT		FROM	TO:
		2001	Present
POSITION/RESPONSIBILITIES			
Vice President, Administration and Finance			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
Colgate University		College	
STREET ADDRESS OF EMPLOYER			
13 Oak Drive			
CITY		STATE	ZIP CODE
Hamilton		NY	13346
DATES OF EMPLOYMENT	FROM	TO:	
	1985	2001	
POSITION/RESPONSIBILITIES			
Associate Provost/Chief Information Officer			
REASON FOR DEPARTURE			
[REDACTED]			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Article 28 Hospital
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH Office of Managed Care	

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes** **No**

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? **Yes** **No**

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

Significant professional managerial experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

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9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE: X <i>Karen L. Leach</i>	DATE: 9/30/2010
PRINT OR TYPE NAME: KAREN L. LEACH	
TITLE: Vice President, Administration + Finance Hamilton College	
NOTARY: <i>Margaret A. Keblish</i>	DATE: 9/30/2010

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

KAREN L. LEACH

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE:		DATE:
X		9/30/2010
PRINT OR TYPE NAME:		
KAREN L. LEACH		
TITLE:		
VICE PRESIDENT, ADMINISTRATION + FINANCE HAMILTON COLLEGE		

NOTARY:	DATE:
	9/30/2010

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Christopher Max, M.D.

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Max		Christopher		
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Christopher Max, MD, PC, 1676 Sunset Ave, 4 th Floor				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13503	315-624-8110	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Trinity College	Hartford, CT	1971	1975	BS	1975
Universidad del Noreste	Tampico, Mexico	1976	1980	MD	1980
New York University	New York City, NY	1980	1981	MD	1981

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD # 148330	New York State, OPMC 217 South Salina Street Syracuse, NY 13202	1980-1981	None

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Self-Employed		Medical practice	
STREET ADDRESS OF EMPLOYER			
1676 Sunset Ave, 4 th Floor			
CITY		STATE	ZIP CODE
Utica		NY	13502
DATES OF EMPLOYMENT		FROM	TO:
			Present
POSITION/RESPONSIBILITIES			
Physician – Medical Group Practice			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2008	Present	Faxton St. Luke's Healthcare	P O Box 479, Utica, NY 13503	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board Member		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board Member		NYS DOH OSHM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board Member		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica and Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board Member		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Managers		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

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<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If "Yes", provide details below</p>	

New York State Department of Health
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Schedule 2A

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X <i>Christopher C Max</i>	10/11/2010
PRINT OR TYPE NAME	
Christopher Max, M.D.	
TITLE	

NOTARY	DATE
<i>Margaret A. Keblish</i>	10/11/2010

Has the original of this document been signed and notarized? Yes X No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Christopher Max, M.D.

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X <i>Christopher Max</i>	10/11/2010
PRINT OR TYPE NAME	
Christopher Max, M.D.	
TITLE	

NOTARY	DATE
<i>Margaret A. Keblish</i>	10/11/2010

MARGARET A. KEBLISH
 Notary Public, State of New York
 No. 01KE6029261
 Qualified in Oneida County
 Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Gregory B. McLean

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
McLean		Gregory		B.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Caruso McLean & Co., Inc, 110 Lomond Court				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13502	315-724-5105	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
RPI	Troy, NY	1990	1991	-----	
Siena College	Loudonville, NY	1977	1980	BS	1980

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Series 7, 8, 66, 63	FINRA	1980	
Life/Health	NYS Insurance Commission	1980	
AAMS	College for Financial Planning	2008	
AWMA	College for Financial Planning	2010	

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Caruso McLean & Co., Inc.		Investment Advisor	
STREET ADDRESS OF EMPLOYER			
110 Lomond Court			
CITY		STATE	ZIP CODE
Utica		NY	13502
DATES OF EMPLOYMENT		FROM	TO
		1988	Present
POSITION/RESPONSIBILITIES			
President			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
1995	Present	The House of Good Shepherd	Campion Road, New Hartford, NY	Children's Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
VP Board of Directors		NYS DOH		

From	To	Name of Facility	Address of Facility	Type of Facility
1995	Present	Presbyterian Homes and Services	Middle Settlement Road, New Hartford, NY 13413	Skilled Nursing
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
President Foundation Board, BD Member, Homes & Services		NYS DOH		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
1998	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13503	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Treasurer, Vice Chair, & Current Chair		NYS DOH		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	St. Luke's Home Residential Health Care Facility, Inc.	1650 Champlin Ave, Utica, NY 13503	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

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From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202
From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: NONE			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes X** **No**

If "Yes, Please provide the following information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? **Yes X** **No**

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

**New York State Department of Health
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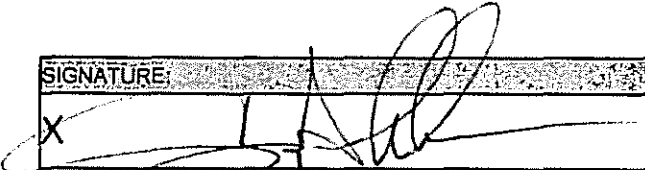
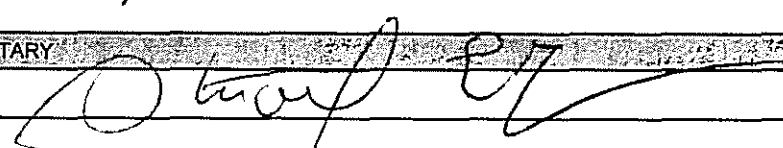
Schedule 2A

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If "Yes", provide details below</p>	

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X 	9/28/10
PRINT OR TYPE NAME	
GREGORY B McLEAN	
TITLE	
Chair, BO OF DIRECTORS	
NOTARY	DATE
	10-4-10

Has the original of this document been signed and notarized? Yes No

STUART E. FINER
Notary Public, State of New York
Qualified in Oneida County
Registration No. 6293340
My Comm. Exp. June 30, 2017

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

GREGORY B McLEAN

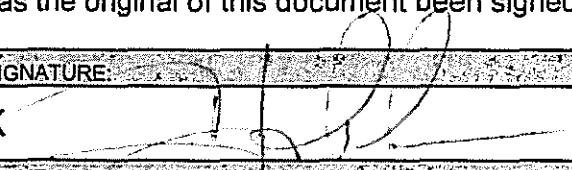
This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

MY INVESTMENT ADVISORY FIRM PROVIDE INVESTMENT ADVICE TO THE HOUSE OF THE GOOD SHEPHERD AND PRESBYTERIAN HOMES + SERVICES AND RECEIVES COMPENSATION BASED ON ASSETS

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE:
X 	10/4/2010
PRINT OR TYPE NAME:	
GREGORY B McLEAN	
TITLE:	

NOTARY:	DATE:
	10/4/2010

STUART E. FINER
Notary Public, State of New York
Qualified in Oneida County
Registration No. 6293340 2014
My Comm. Exp. June 30, 2014

Schedule 2A - Personal Qualifying Information

Name of Individual:

Roger McReynolds

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
McReynolds		Roger		P.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Faxton St. Luke's Healthcare, P. O. Box 479				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13503	315-624-6831	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Syracuse University	Syracuse, NY	1977	1985	MBS	1985
SUNY IT	Utica, NY	1974	1976	BS	1976
MVCC	Utica, NY	1970	1974	AA	1974

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Faxton St. Luke's Healthcare		Hospital	
STREET ADDRESS OF EMPLOYER			
1656 Champlin Ave			
CITY		STATE	ZIP CODE
Utica		NY	13502
DATES OF EMPLOYMENT	FROM	TO:	
	2007	Present	
POSITION/RESPONSIBILITIES			
Vice President Performance Improvement			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
Partech, Inc.		Manufacturing	
STREET ADDRESS OF EMPLOYER			
8383 Seneca Turnpike			
CITY		STATE	ZIP CODE
New Hartford		NY	13413
DATES OF EMPLOYMENT	FROM	TO:	
	1983	2007	
POSITION/RESPONSIBILITIES			
Vice President, Chief Quality Officer			
REASON FOR DEPARTURE			
[REDACTED]			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2005	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Managers		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility

Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority; or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

New York State Department of Health
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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X <i>Robert P. McReynolds</i>	9/30/10
PRINT OR TYPE NAME	
<i>Robert P. McReynolds</i>	
TITLE	
<i>VP - Performance Improvement</i>	

NOTARY	DATE
<i>Margaret A. Keblish</i>	9-30-2010

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2010

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Roger McKEYNOLDS

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

[Empty box for describing relationships and payment methods]

Has the original of this document been signed and notarized? Yes No

SIGNATURE	DATE
X <i>Roger P. McKeynolds</i>	9/30/10
PRINT OR TYPE NAME	
ROGER P. McKEYNOLDS	
TITLE	
VP- PERFORMANCE IMPROVEMENT	

NOTARY	DATE
<i>Margaret A. Keblish</i>	9-30-10

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Michael Paparone

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Paparone		Michael		-
STREET ADDRESS				
[REDACTED]				
CITY		ZIP CODE	TELEPHONE	
[REDACTED]		[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
ECR International, Inc., 2201 Dwyer Ave, Utica, NY 13504				
CITY		STATE	ZIP CODE	TELEPHONE
Utica		NY	13504	315-731-4143
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
St. Joseph's University	Philadelphia, PA	1970	1974	BS	1974
Drexel University	Philadelphia, PA	1976	1978	MBA	1978

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
ECR International, Inc.		HVAC Manufacturing	
STREET ADDRESS OF EMPLOYER			
2201 Dwyer Ave			
CITY		STATE	ZIP CODE
Utica		NY	13504
DATES OF EMPLOYMENT	FROM	TO:	
	2008	Present	
POSITION/RESPONSIBILITIES			
CEO/President			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
Owens-Illinois		Plastics	
STREET ADDRESS OF EMPLOYER			
One O-I Way			
CITY		STATE	ZIP CODE
Toledo		OH	43601
DATES OF EMPLOYMENT	FROM	TO:	
	2004	2007	
POSITION/RESPONSIBILITIES			
President Plastics Division			
REASON FOR DEPARTURE			
[REDACTED]			

NAME OF EMPLOYER		TYPE OF BUSINESS	
E.I. DuPont		Chemical	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
Wilmington		DE	19801
DATES OF EMPLOYMENT	FROM	TO:	
	1974	2004	
POSITION/RESPONSIBILITIES			
Various positions			
REASON FOR DEPARTURE			
Retired			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Article 28 Hospital
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH Office of Managed Care	

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
		Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency
		Member Board of Directors	NYS DOH OHSM	217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

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<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If "Yes", provide details below</p>	

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE:
X <i>Michael Rapone</i>	9/28/2010
PRINT OR TYPE NAME:	
<i>Michael Rapone</i>	
TITLE:	
<i>CEO/PRESIDENT EUC INTERNATIONAL, INC</i>	
NOTARY:	DATE:
<i>Margaret A. Keblish</i>	9/28/2010

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

MICHAEL PAPPALONIS

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

[Empty box for describing health care facilities]

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE:
<i>X Michael Pappalonis</i>	<i>9/28/2010</i>
PRINT OR TYPE NAME	
<i>MICHAEL PAPPALONIS</i>	
TITLE	
<i>CEO/PRESIDENT ECR INTERNATIONAL, INC</i>	

NOTARY	DATE:
<i>Margaret A. Koblisch</i>	<i>9/28/2010</i>

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

William M. Parker, M.D.

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Parker		William		M
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Faxon St. Luke's Healthcare – ACP Medical Group, 1656 Champlin Ave				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13503	315-574-2300	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Colgate University	Hamilton, NY	1972	1976	BA	1976
SUNY Buffalo Med School	Buffalo, NY	1976	1980	MD	1980
Albany Medical Center	Albany, NY	1980	1983	Residency in Internal Med	1983

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Physician #147141-1	NYS Education Department, Office of the Professions	Original 1980	

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Faxton St. Luke's Healthcare		Hospital	
STREET ADDRESS OF EMPLOYER			
1656 Champlin Ave			
CITY		STATE	ZIP CODE
Utica		NY	13503
DATES OF EMPLOYMENT	FROM	TO:	
	2001	Present	
POSITION/RESPONSIBILITIES			
Physician – Office practice internal medicine			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
Adirondack Community Physicians (ACP)		Medical Practice	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
Utica		NY	13502
DATES OF EMPLOYMENT	FROM	TO:	
	1996	2001	
POSITION/RESPONSIBILITIES			
Physician – Office Practice			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
1996	2001	ACP	Utica, NY	Group Medical Practice
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
President		NYS Education Department		Albany, NY

From	To	Name of Facility	Address of Facility	Type of Facility
2000	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Article 28 Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member of Board of Directors; past treasurer		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
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2009	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes X** **No**

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? **Yes X** **No**

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
Question #5: Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p> </p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p> </p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	
<p>If "Yes", provide details below</p>	

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X <i>William M Parker</i>	9/30/10
PRINT OR TYPE NAME	William M Parker
TITLE	Board director/MD

NOTARY	DATE
<i>Margaret A. Keblish</i>	9/30/2010

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Onida County B
Commission Expires 08/09/2011

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

William M. Parker

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Faxton St. Lukes Healthcare - employed physician

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE:
X <i>William M Parker</i>	9/30/10
PRINT OR TYPE NAME	
William M Parker	
TITLE:	
Director / MD	

NOTARY	DATE:
<i>Margaret A. Koblisch</i>	9/30/2010

MARGARET A. KEBLISCH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Scott H. Perra

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Perra		Scott		H
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Faxton St. Luke's Healthcare, P. O. Box 479				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13503	315-624-6002	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Mohawk Valley Community College	Utica, NY	9/1/1975	5/31/1977	AS Business Administration	5/31/1977
SUNY IT at Utica/Rome	Utica, NY	9/1/1977	5/31/1979	Bachelors Health Services Mgmt	5/31/1979
SUNY at Binghamton	Binghamton, NY	9/1/1987	5/31/1989	Masters of Science Mgmt Services	5/31/1989

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
None			

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Faxton St. Luke's Healthcare		Healthcare	
STREET ADDRESS OF EMPLOYER			
1656 Champlin Ave			
CITY		STATE	ZIP CODE
Utica		NY	13503
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
President/CEO		See Attached Curriculum Vitae	
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Faxton St. Luke's Healthcare	P. O. Box 479, Utica, NY 13502	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
President/CEO & Member of Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202
From	To	Name of Facility	Address of Facility	Type of Facility
1996	Present	St. Luke's Home Residential Healthcare Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202
From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Managers		NYS DOH Office of Managed Care		
From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Managers		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202
From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202
From	To	Name of Facility	Address of Facility	Type of Facility
1999	2002	Hospice & Palliative Care	4277 Middle Settlement Road, New Hartford, NY 13413	Home & Community Based Program (Hospice)
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Home & Community Based Program		17 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
1997	Present	Mohawk Valley Heart Institute	2209 Genesee Street, Utica, NY 13501	
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: NONE			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

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d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

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6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

**New York State Department of Health
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Schedule 2A

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If "Yes", provide details below</p>	

New York State Department of Health
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Schedule 2A

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X <i>Scott H. Perra</i>	<i>9/16/10</i>
PRINT OR TYPE NAME	
Scott H. Perra	
TITLE	
President/CEO	

NOTARY	DATE
<i>Margaret A. Keblish</i>	<i>9/16/2010</i>

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Scott H. Perra


This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Faxton St. Luke's Healthcare - President/CEO

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X 	9/16/10
PRINT OR TYPE NAME	
Scott H. Perra	
TITLE	
President/CEO	

NOTARY	DATE
	9/16/2010

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Faxton-St. Luke's Healthcare
P.O. Box 479
Utica, New York 13503
Work: (315) 624-6002
Home: [REDACTED]
E-Mail: sperra@mvnhealth.com

SCOTT H. PERRA, MS, FACHE

EXECUTIVE SUMMARY

A team oriented entrepreneurial Senior Healthcare Executive with extensive knowledge in network and system development. Experienced in facility consolidation having led three consolidations. Demonstrated ability to successfully combine strategic, operational, and financial initiatives to achieve desired results. Effective in developing strong medical staff and collaborative relationships to achieve positive patient care and financial outcomes.

EXPERIENCE

January 2009 – Present

**FAXTON-ST. LUKE'S HEALTHCARE, UTICA, NEW YORK
AND MOHAWK VALLEY NETWORK (MVN), INC.**

President/CEO

Promoted to the position of Chief Executive of the Hospital and Parent Corporation. MVN functions as an integrated delivery system with \$320 million in revenue and 3,500 employees. Responsibilities include strategic planning, coordination of services, business development, and contract negotiations for the system.

November 1998 – December 2008

FAXTON-ST. LUKE'S HEALTHCARE, UTICA, NEW YORK

Executive Vice President/COO

Responsible for the operation of a multi-facility system that includes two acute care campuses with a total of 372 beds, a 242-bed nursing home, and 15 ambulatory care sites. Total budget over \$275 million with over 2,400 FTEs. Accountable for nursing and patient care services, Medical Staff, financial services, diagnostic and professional services, surgical services, human resources, ancillary and support services, long-term care services, and ambulatory services.

Selected Accomplishments

- Led the acquisition and assimilation of Adirondack Community Physicians a 25+ primary care provider group into an existing hospital group.
- Facilitated a comprehensive assessment and work redesign in surgical and emergency services resulting in measurable improvements in both areas.
- Obtained New York State approval and operationalized an Emergency Cardiac Angioplasty and Electrophysiology Program.
- Led the planning and implementation of a service and facilities reconfiguration plan for two campuses resulting in \$2 million in bottom line improvement.

- Planned, developed, and operationalized St. Luke's Home, a 242-bed skilled nursing facility.
- Oversaw the development and expansion of the Regional Dialysis Program from 14 to over 75 patient stations, serving 400+ patients at six sites.
- Facilitated the reorganization of nursing services, enhancing the quality of patient care and improving fiscal accountability at the nursing unit level resulting in better and more consistent nurse to patient ratios.
- Created the infrastructure to support Relationship Based Care, serving as Executive Sponsor in Wave I, which has resulted in improved patient and staff satisfaction.
- Launched the "Tomorrow's Workforce" initiative for workplace culture enhancement, resulting in a 22% improvement in employee satisfaction over three years.
- Implemented organizational restructure to streamline processes across affiliated entities leading to the successful integration of Financial, Human Resources, and Legal/Risk Management resources resulting in bottom line savings.
- Successfully negotiated contracts with anesthesia, emergency, and primary care physicians.

August 1989 – October 1998

ST. LUKE'S-MEMORIAL HOSPITAL CENTER, UTICA, NEW YORK

Executive Vice President/Chief Operating Officer (November 1989 – October 1998)

Responsible for the daily operation of this full service, financially strong healthcare system, \$100+ million budget with 1,500 FTEs, which included a 266 bed acute care hospital, two nursing homes (160 beds and 124 beds), five primary care, and three dialysis sites.

Selected Accomplishments

- Responsible for the long range planning process that resulted in achieved objectives.
- Directed the expansion of primary and specialty care centers.

Assistant Executive Director for Finance (July 1986 – October 1989)

Responsible for the financial operations of the hospital, which included patient accounting, registration, financial accounting, cost reporting, and financial forecasting. Participated in administrator-on-call duties and served as staff to several Board committees.

Associate Director of Finance (August 1985 – July 1986)

Responsible for the daily financial operations of the hospital and directed a major information systems conversion.

December 1981 – August 1985

CAYUGA MEDICAL CENTER, ITHACA, NEW YORK

Assistant Director of Fiscal Services and Joint Project Director

As Joint Venture Project Director, was responsible for collaborating with the Medical Staff on the development of a medical office building, proposed corporate reorganization, and an independent practice association while maintaining daily financial responsibilities for this 200-bed hospital.

April 1979 - November 1981

EDWARD JOHN NOBLE HOSPITAL, ALEXANDRIA BAY, NEW YORK

Administrative Assistant and Patient Accounts Manager

This 50-bed hospital was a member of a rural healthcare system, which included a management company and several rural facilities. Maintained responsibility for several operational departments and interaction with system affiliates.

FACULTY EXPERIENCE

January 1989 - May 1991

THE NEW SCHOOL FOR SOCIAL RESEARCH, UTICA, NEW YORK

Instructor in Institutional Financial Management in Master of Health Administration Degree Program in the Graduate School of Management and Urban Professions.

EDUCATION

MASTER OF SCIENCE IN MANAGEMENT SCIENCE, MAY 1989

State University of New York at Binghamton, New York
Major: Systems Management

BACHELOR OF PROFESSIONAL STUDIES (WITH HONORS), MAY 1979

State University of New York College of Technology at Utica/Rome, New York
Major: Health Services Management

ASSOCIATE IN SCIENCE, BUSINESS ADMINISTRATION, MAY 1977

Mohawk Valley Community College, Utica, New York

PROFESSIONAL ACTIVITIES

- Board Member, VHA Empire Metro, 2009-Present
- Board Member, VHA UNYHealth, LLC, 2009-Present
- Board Member, Iroquois Healthcare Alliance, 2009-Present
- American College of Healthcare Executives (ACHE), Fellow, 2000
- Member, ACHE Regents Advisory Council, 2002 - 2010
- Member, Healthcare Association of New York State (HANYS) COO Task Force, 2005 - 2008
- Member, Healthcare Management Association
- Advanced Member, Healthcare Financial Management Association (HFMA), 1985 - 2003
- President, Central New York Chapter, HFMA 1988-1989
- President-Elect and Program Chairman, Central New York Chapter HFMA, 1987-1988
- Secretary, Central New York Chapter, HFMA 1986-1987
- Recipient, Follmer Bronze Merit Award, HFMA 1989

COMMUNITY AND BOARD INVOLVEMENT

- The Community Foundation of Herkimer & Oneida Counties, Inc.
 - Grants Committee, 2008-2009
 - Audit and Compliance Committee, 2009 – Present
- Excellus BlueCross/BlueShield Utica Regional Healthcare Quality Benefits Management Committee, 2009 – Present
- Mohawk Valley EDGE Board of Directors and Executive Committee, 2010
- Greater Utica United Way Campaign Fundraiser
- Graduate of Leadership Mohawk Valley (LMV), 1991, Recipient of 2004 LMV Follow the Leader Award
- Member, Professional Advisory Committee, Health Services Management Program, SUNY College of Technology, 2000 - Present
- Board of Directors, Finance, and Executive Committee member, Hospice Care, Inc., 1998-2002
- Member, Adirondack Bank - Mohawk Valley Advisory Board, 2001-Present
- Member, Oneida County School and Business Alliance (SABA), Board of Directors, 2003 – Present
- Chairman, Board of Directors, St. Luke's Home, 1996-2003
- Treasurer, Board of Directors, Centrex Clinical Laboratories, 1994-2003
- Vice President, SLM Office Building, Inc., 2000-Present
- Secretary, Board of Directors, Mohawk Valley Heart Institute, 1996-Present

References available upon request.

Schedule 2A - Personal Qualifying Information

Name of Individual:

James B. Stewart

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Stewart		James		B.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Stewart Associates, LLC, PO Box 582				
CITY	STATE	ZIP CODE	TELEPHONE	
New Hartford	NY	13413	315-724-1004	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Hofstra University	Hempstead, Long Island, NY	1960	1964	Bachelor of Business Admin	1964

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Insurance Agent for Life, Accident, and Health License # 1121031	NY State Insurance Department, 25 Beaver Street, NY, NY (518-474-6630) www.ins.state.ny.us	4/2009	12/2010

4. Employment History for the Past 10 Years

Currently Employed – Part Time Retired

If retired, please specify date of retirement: [REDACTED]

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Stewart Associates, LLC		Insurance Broker/Consulting	
STREET ADDRESS OF EMPLOYER			
PO Box 582			
		STATE	ZIP CODE
New Hartford		NY	13413
DATES OF EMPLOYMENT	FROM	TO:	
	1999	Present	
POSITION/RESPONSIBILITIES			
President/CEO			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
Sears Roebuck and Co		Retail	
STREET ADDRESS OF EMPLOYER			
Sangertown Square Mall			
CITY		STATE	ZIP CODE
New Hartford		NY	13413
DATES OF EMPLOYMENT	FROM	TO:	
	June 1964	August 31, 2005	
POSITION/RESPONSIBILITIES			
Store General Manager			
REASON FOR DEPARTURE			
Retired			

NAME OF EMPLOYER		TYPE OF BUSINESS	
US Army			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
	1964	1970	
POSITION/RESPONSIBILITIES			
Reserve Officer			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
1996	2002	Presbyterian Home	Middle Settlement Road, New Hartford, NY 13413	Nursing Home
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Director		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
1985	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Article 28 Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Director, Past Chair, Vice Chair		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes X** **No**

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? **Yes X** **No**

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

Business executive with Sears Roebuck; member of many other community boards
--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

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9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

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--

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE:
X <i>James B. Stewart</i>	9/30/10
PRINT OR TYPE NAME:	
JAMES B. STEWART	
TITLE:	
DIRECTOR	

NOTARY:	DATE:
<i>Margaret A. Keblish</i>	9/30/2010

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

JAMES B. STEWART

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

--

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X <i>James B. Stewart</i>	9/30/10
PRINT OR TYPE NAME	
JAMES B. STEWART	
TITLE	
DIRECTOR	

NOTARY	DATE
<i>Margaret A. Koblisch</i>	9/30/2010

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Stephen L. Sweet

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Sweet		Stephen		L
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
Sweet Products, LLC, 7856 State Route 5				
CITY	STATE	ZIP CODE	TELEPHONE	
Clinton	NY	13323	315-853-6499 Ext. 21	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]				
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Bucknell University	Lewisburg, PA	1977	1981	BA	1981

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Sweet Products, LLC		Distribution	
STREET ADDRESS OF EMPLOYER			
7856 State Route 5			
CITY		STATE	ZIP CODE
Clinton		NY	13323
DATES OF EMPLOYMENT	FROM	TO:	
	1993	Current	
POSITION/RESPONSIBILITIES			
Owner			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY	STATE	ZIP CODE	
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY	STATE	ZIP CODE	
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2004	2010	Mohawk Valley Heart Institute	2209 Genesee Street, Utica, NY 13501	
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202
From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Treasurer		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202
From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Treasurer		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202
From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Treasurer		NYS DOH Office of Managed Care		
From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Treasurer		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Treasurer		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Office Held/Nature of Interest	Name of Licensing Agency	Address of Licensing Agency	

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?

10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?

11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:

a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?

b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?

c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?

d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?

e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?

f) was denied a certificate of authority or license to do business in any state?

If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.

Have you ever been in a position that required a fidelity bond?

Were any claims made against that bond? If "Yes", provide details below

Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?

If "Yes", provide details below

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--

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X <i>[Signature]</i>	9-30-10
PRINT OR TYPE NAME	
<i>Stephen L. Sweet</i>	
TITLE	

NOTARY	DATE
<i>Margaret A. Keblish</i>	9/30/2010

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

[Empty box for Name of individual]

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

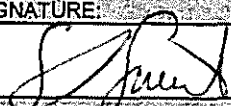
Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

[Empty box for description of relationships]

Has the original of this document been signed and notarized? Yes No

SIGNATURE	DATE
X 	9-30-10
PRINT OR TYPE NAME	
Stephen L. Sweet	
TITLE	

NOTARY	DATE
Margaret A. Keblish	9/30/2010

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Richard C. Tantillo

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Tantillo		Richard		C.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
Hamilton College, 198 College Hill Road				
CITY	STATE	ZIP CODE	TELEPHONE	
Clinton	NY	13323	315-859-4412	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
SUNY Albany	Albany, NY	1978	1981	MS/Ed Cert	1981
St. Bonaventure	St. Bonaventure, NY	1974	1978	BA	1978

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Hamilton College		Higher Education	
STREET ADDRESS OF EMPLOYER			
198 College Hill Road			
CITY		STATE	ZIP CODE
Clinton		NY	13323
DATES OF EMPLOYMENT	FROM	TO:	
	1994	Present	
POSITION/RESPONSIBILITIES			
Vice President, Communications & Development			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
Rensselaer Polytechnic Institute		University	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
Troy		NY	12180
DATES OF EMPLOYMENT	FROM	TO:	
	1981	1994	
POSITION/RESPONSIBILITIES			
Director of Development			
REASON FOR DEPARTURE			
[REDACTED]			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2006	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Vice Chair		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Vice Chair		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, Ny 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Vice Chair		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Vice Chair		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Vice Chair		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

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9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

New York State Department of Health
Certificate of Need Application

Schedule 2A

--

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE:
X <i>Richard C Tantiello</i>	<i>Sept 30, 2010</i>
PRINT OR TYPE NAME:	
<i>Richard C Tantiello</i>	
TITLE:	
<i>Vice Chairman</i>	

NOTARY:	DATE:
<i>Margaret A. Keblish</i>	<i>9/30/2010</i>

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/20 13

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Richard C Tantillo

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

[Empty box for describing relationships and payment methods]

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE:
<i>X Richard C Tantillo</i>	<i>Sept 30 2010</i>
PRINT OR TYPE NAME:	
<i>RICHARD C TANTILLO</i>	
TITLE:	
<i>Vice Chairman</i>	

NOTARY:	DATE:
<i>Margaret A. Keblish</i>	<i>9/30/2010</i>

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Bonnie L. Woods

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Woods		Bonnie		L
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Bank of America, 268 Genesee Street				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13502	315-798-2732	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Hartwick College	Oneonta, NY	1986	1990	BS	1990

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
CTFA #86215	Institute Certified Bankers Washington, DC	7/2003	Ongoing

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Bank of America		Financial Services	
STREET ADDRESS OF EMPLOYER			
268 Genesee Street			
CITY		STATE	ZIP CODE
Utica		NY	13502
DATES OF EMPLOYMENT	FROM	TO:	
	1991	Present	
POSITION/RESPONSIBILITIES			
Trust Executive			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	St. Luke's Home Residential Healthcare Facility Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13502	Article 28 Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Managed Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2003	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2000	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

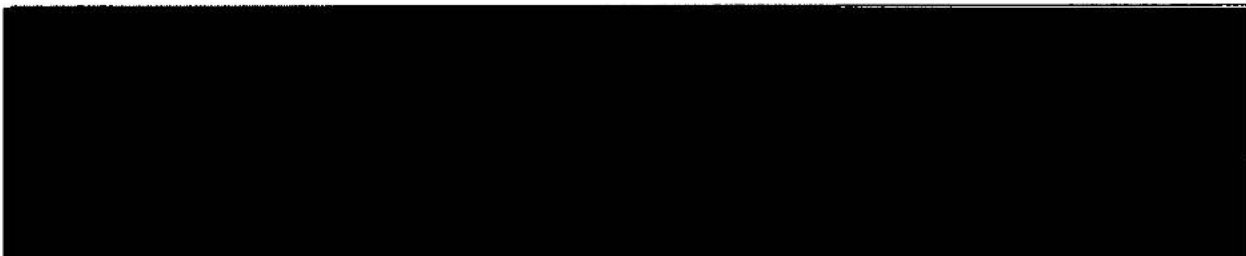
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6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		



<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p> </p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p> </p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	

New York State Department of Health
Certificate of Need Application

Schedule 2A

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE:
X <i>Bonnie L. Woods</i>	9/30/2010
PRINT OR TYPE NAME	
<i>Bonnie L. Woods</i>	
TITLE	
<i>Trustee</i>	

NOTARY	DATE:
<i>Charles Johnston</i>	9/30/10

Has the original of this document been signed and notarized? Yes No

CHARLES JOHNSTON
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires Sept. 30, 2014

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Bonnie Woods

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized?

Yes

No

SIGNATURE:	DATE:
X Bonnie L. Woods	9/30/2010
PRINT OR TYPE NAME:	
Bonnie L. Woods	
TITLE:	
Trustee	
NOTARY:	DATE:
Andrea G. Johnston	9/30/10

ANDREA G. JOHNSTON
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires Sept. 30, 20 14



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

October 21, 2010

Ms. Ann Gormley
Consultant
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Re: 092142 B
Mohawk Valley EC, LLC
(Oneida County)
Establish/construct a single-specialty
ASC providing endoscopy, at
116 Business Park Drive, Utica
Revised: October 20, 2010
Add Faxton St. Luke's Healthcare and
St. Elizabeth Medical Center to
ownership, each with 20% interest;
increase in Total Project Costs

Dear Ms. Gormley:

We have received your **revision** to the CON application referenced above and it is being distributed to all reviewing units via a copy of this letter.

Subsequent to this letter, you may receive requests for additional information from OHSM and/or the Health Systems Agency. Please note that you must respond within the time frame allotted or risk withdrawal of the application from further processing. In addition, you may voluntarily submit any additional information, which you believe, might facilitate the review of your proposal, unless specific deadlines have otherwise been established. Any such submission should consist of eight (8) copies of the material to be reviewed.

Should you require assistance regarding this application, please contact the Bureau of Project Management at (518) 402-0911.

Sincerely,

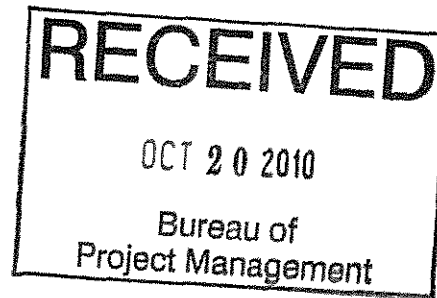
A handwritten signature in black ink, appearing to read 'Jeffrey R. Rothman'.

Jeffrey R. Rothman, M.S., M.B.A.
Director
Bureau of Project Management

JRR/KJM/nm

October 13, 2010

Project Management Group
Division of Health Facility Planning
Office of Health Systems Management
New York State Department of Health
Attn: Mr. Jeffrey Rothman
433 River Street, 6th Floor
Troy, New York 12180-2299



RE: Mohawk Valley EC, LLC
Application No. 092142B

Dear Mr. Rothman:

Enclosed please find an original and eight copies of a revised Certificate of Need application to establish and construct a single specialty ambulatory surgery center providing endoscopy services at 116 Business Park Drive in Utica, New York. This revision of Application No. 092142B reflects guidance provided by the Establishment Committee of the Public Health Council at its meeting on August 31, 2010 when it considered this application.

The revised application reflects a new ownership structure under which both Faxon St. Luke's Healthcare and St. Elizabeth Medical Center each will own 20 percent interest in the proposed facility.

In view of the importance of this project to the residents of the Mohawk Valley and the Department's recommendation for approval of the previously reviewed application, an expedited review and presentation to the SHRPC and Public Health Council is hereby requested.

Please contact Ann Gormley at our offices if you have any questions regarding this revised application at (518) 583-4900.

Sincerely,

A handwritten signature in cursive script that reads "Jack Knowlton".

Jackson W. Knowlton
President

Enc

Schedule 1 A - General Information - All Applicants

Main Site	MAIN SITE PFI	TYPE OF FACILITY	MAIN SITE NAME	
		ASC	Mohawk Valley Endoscopy Center	
	STREET & NUMBER			
	116 Business Park Drive			
	CITY		COUNTY	ZIP
Utica		Oneida	13502	

Project Site	PROJECT SITE PFI	TYPE OF FACILITY	PROJECT SITE NAME	
		ASC	Mohawk Valley Endoscopy Center	
	STREET & NUMBER			
	116 Business Park Drive			
	CITY		COUNTY	ZIP
Utica		Oneida	13502	

Operator Information	OPERATING CERTIFICATE NUMBER	TYPE OF FACILITY	LEGAL ENTITY THAT WILL OPERATE OF THE FACILITY (or proposed operator)	
		ASC	Mohawk Valley EC, LLC	
	STREET & NUMBER			
	116 Business Park Drive			
	CITY		COUNTY	ZIP
Utica		Oneida	13502	

Title of Attachment:

Is the applicant an existing facility? If yes, attach a photocopy of the resolution of partners, corporate directors, or LLC managers, as the case may be, authorizing the project.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
Is the applicant part of an "established article 28* network" as defined in section 401.1(j) of 10 nycrr? If yes, attach a statement that identifies the network and describes the applicant's affiliation. Attach an organizational chart, if available.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	

Type of Application: Establishment Construction Administrative Limited

Total Project Cost:

\$3,899,300


Amount of Application Fee (see Schedule 8)

\$2,000.00

Acknowledgement And Attestation

I hereby certify, under penalty of perjury, that I am duly authorized to subscribe and submit this application on behalf of the applicant: WFS

I further certify that the information contained in this application and its accompanying schedules and attachments are accurate, true and complete in all material respects. I acknowledge and agree that this application will be processed in accordance with the provisions of articles 28, 36 and 40 of the public health law and/or article 7 of the social services law, and implementing regulations, as the case may be.

SIGNATURE	DATE
	10/15/2010
PRINT OR TYPE NAME	TITLE
Bradley F. Sklar, M.D.	Member

**New York State Department of Health
Certificate of Need Application**

Schedule 1A

Contacts:

Applicant should identify the operator's chief executive officer, or equivalent official, to whom all official correspondence from DOH about this application should be addressed

CHIEF EXECUTIVE	NAME AND TITLE OF CHIEF EXECUTIVE		
	Bradley Sklar, M.D.		
	STREET & NUMBER		
	110 Business Park Drive c/o Digestive Disease Medicine		
	CITY	STATE	ZIP
	Utica	NY	13502
TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
315-624-7000	315-793-1179		

Applicant may designate a second person to whom copies of all official correspondence from DOH about this application should be addressed. (This could be the applicants attorney, or a consultant)

CONTACT INFORMATION	CONTACT PERSON'S COMPANY	NAME AND TITLE OF CONTACT PERSON	
	Empire Health Advisor	Ann Gormley, Consultant	
	STREET & NUMBER		
	60 Railroad Place, Suite 101		
	CITY	STATE	ZIP
	Saratoga Springs	NY	12866
TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
518-583-4900	518-583-4999		

The applicant's lead attorney should be identified:

ATTORNEY	NAME		
	Bruce Smith, Esq., Wood and Smith, P.C.		
	STREET & NUMBER		
	110 W. Fayette Street, Suite 1110		
	CITY	STATE	ZIP
	Syracuse	NY	13202
TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
315-423-0400	315-424-1011	bsmith@woodsmithlaw.com	

If a consultant prepared the application, the consultant should be identified:

CONSULTANT	NAME		
	Ann M. Gormley, Empire Health Advisors		
	STREET & NUMBER		
	60 Railroad Place, Suite 101		
	CITY	STATE	ZIP
	Saratoga Springs	NY	12866
TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
518-583-4900	518-583-4999		

**New York State Department of Health
Certificate of Need Application**

Schedule 1A

The applicant's lead accountant should be identified:

ACCOUNTANT	NAME		
	John D. Marshall, CPA, Testone, Marshall and Discenza, CPAs		
	STREET & NUMBER		
	The Foundry, 432 North Franklin Street		
	CITY	STATE	ZIP
	Syracuse	NY	13204
	TELEPHONE	FAX NUMBER	E-MAIL ADDRESS
315-476-4004	315-475-1513	jmarshall@tmdcpas.com	

Checklist of Schedules Included in This Application

Schedule Number	Schedule Name	Required	Included
1	General Information Forms	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2a	Personal Qualifying Information	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2b	Personal Financial Statement	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2c	Not-For-Profit Director's Statement	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3b	Basic Legal Information and Documentation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4	Ownership Transfers Only- Additional Legal Information For All Articles	<input type="checkbox"/>	<input type="checkbox"/>
5	Working Capital Financing Plan (Not Applicable for Article 7)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
6	Architectural Submission	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
7	Environmental Assessment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
8	Project & Subproject Cost Summary	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
9	Proposed Plan For Project Financing	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
10	Space & Construction Cost Distribution	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
11	Movable Equipment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
12a	Adult Care Facilities Program Information	<input type="checkbox"/>	<input type="checkbox"/>
12c	Architectural	<input type="checkbox"/>	<input type="checkbox"/>
12d	Project Financing or Lease	<input type="checkbox"/>	<input type="checkbox"/>
12e	Projected Start Up Operating Budget- (2 Years)	<input type="checkbox"/>	<input type="checkbox"/>
12f	Operating Budget- Adult Care Facility -Full Occupancy	<input type="checkbox"/>	<input type="checkbox"/>
13a	Assurances	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
13b	Staffing	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
13c	Annual Operating Costs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
13d	Annual Operating Revenues	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
16a	Hospital Program Information	<input type="checkbox"/>	<input type="checkbox"/>
16b	Community Need	<input type="checkbox"/>	<input type="checkbox"/>
16c	Impact of CON Application - Hospital Operating Certificate	<input type="checkbox"/>	<input type="checkbox"/>
16d	Hospital Outpatient Departments	<input type="checkbox"/>	<input type="checkbox"/>
16e	Hospital Utilization/Discharge and Patient Days	<input type="checkbox"/>	<input type="checkbox"/>
16f	Hospital Facility Access	<input type="checkbox"/>	<input type="checkbox"/>
17a	Diagnostic & Treatment Center Program Information	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
17b	Community Need	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
17c	Impact of CON Application - D&TCs Operating Certificate	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
17d	D&TC Allocation of Operating Costs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
17e	D&TC Statement of Revenue	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
18a	Residential Health Care Facility (RHCF) Program Information	<input type="checkbox"/>	<input type="checkbox"/>
18b	Impact of CON Application - RHCF Operating Certificate	<input type="checkbox"/>	<input type="checkbox"/>
18c	RHCF Space & Construction Cost Distribution	<input type="checkbox"/>	<input type="checkbox"/>
18d	RHCF Statement of Functional Expenses	<input type="checkbox"/>	<input type="checkbox"/>
18e	RHCF Analysis of Net Patient Revenue & Total Operating Revenue	<input type="checkbox"/>	<input type="checkbox"/>
19a	Adult Day Health Care Programs (ADHCP) Program Information	<input type="checkbox"/>	<input type="checkbox"/>
19b	ADHCP Services-Staffing/Program Information	<input type="checkbox"/>	<input type="checkbox"/>
20a	OMH Component (If Applicable)	<input type="checkbox"/>	<input type="checkbox"/>
21a	CHHA and LTHHCP Program Information	<input type="checkbox"/>	<input type="checkbox"/>
21b	Impact of CON Application - CHHA & LTHHCP Operating Certificate	<input type="checkbox"/>	<input type="checkbox"/>
21d	CHHA/LTHHCP Operating Cost	<input type="checkbox"/>	<input type="checkbox"/>
21e	CHHA/LTHHCP Projected Operating Revenue	<input type="checkbox"/>	<input type="checkbox"/>
21f	CHHA/LTHHCP Projected Utilization By Payer Category	<input type="checkbox"/>	<input type="checkbox"/>
22a	Hospices Program Information	<input type="checkbox"/>	<input type="checkbox"/>
22b	Impact of CON Application - Hospices Operating Certificate	<input type="checkbox"/>	<input type="checkbox"/>
22d	Hospices Operating Costs	<input type="checkbox"/>	<input type="checkbox"/>
22e	Hospices Utilization and Revenue Estimates	<input type="checkbox"/>	<input type="checkbox"/>

Schedule 1 B - Abbreviated Executive Summary

Instructions:

In the space below, i.e., no more than one page, provide a succinct overview of your proposal. This may be done in bullet format. The purpose of the Abbreviated Executive Summary (AES) is to give the reviewer a conceptual understanding of the proposal. The AES should summarize the key elements of the proposed project. Details will be contained in the appropriate schedules of the application.

Establishment of a free-standing ambulatory surgery center, single-specialty.

- Mohawk Valley EC, LLC ("MVEC") proposes to develop a single-specialty ambulatory surgery center to provide endoscopy services (the "Center"). The Center will include four operatories and will be located at 116 Business Park Drive, Utica, NY in a building owned by 116 Business Park Associates, LLC, a limited liability company whose ownership is identical to MVEC's.
- MVEC, which will operate the Center, is a limited liability company whose members include Faxton-St.Luke's Healthcare (20 percent); St. Elizabeth Medical Center (20 percent) and MVEC Holdings, LLC (60 percent), which is owned by the seven partners in Digestive Disease Medicine of Central New York, LLP ("DDM"), a medical practice which has provided gastroenterology services to patients primarily residing in Herkimer, Madison and Oneida counties for over 20 years. To date, all DDM outpatient endoscopy procedures – totaling over 19,000 in 2008 – have been provided at either St. Elizabeth Medical Center, Oneida Healthcare Center, Faxton-St Lukes Healthcare – Faxton Division or Faxton-St Lukes Healthcare – St. Luke's Division.
- For several years DDM has been unable to meet the demand for endoscopy procedures from its current patient base. Currently there is a 10-14 week wait for outpatient endoscopy procedures with approximately 500 patients waiting each week – resulting in a backlog of 5,000 -7,000 procedures. DDM has determined that it needs to recruit at least two additional physicians within the next 12 months to service its patient base.
- Establishment of the Center is important for several reasons. First, ownership in the Center will be used as a tool by DDM to recruit additional physicians which will improve the availability of gastroenterology services for residents in the Mohawk Valley area where it is difficult to recruit specialists. Second, by providing needed outpatient endoscopy capacity, it will also reduce patient wait-times, provide enhanced convenience for patients, improve operating efficiencies and reduce costs to governmental and private payers. Third, the establishment of the Center represents an important collaboration between the two hospitals in Utica and the DDM physicians who practice ther to provide additional capacity needed to expand the availability of gastroenterology services to residents of Oneida and surrounding counties.

Schedule 1 C - Other Facilities Owned or Controlled by the Applicant

(Establishment Applications only)

Does the applicant or any related entity (parent, member or subsidiary corporation) operate or control any of the following in New York State?

FACILITY TYPE - NEW YORK STATE	FACILITY TYPE CODE	
Hospital	HOS	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Nursing Home	NH	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Diagnostic and Treatment Center	DTC	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Licensed Home Care Services Agency	LHH	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Certified Home Health Agency	CHH	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Hospice	HSP	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Adult Home	ADH	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Assisted Living Program	ALP	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Long Term Home Health Care Program	LTC	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Enriched Housing Program	EHP	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Health Maintenance Organization	HMO	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Other	OTH	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

**New York State Department of Health
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Schedule 1C

For each facility or agency referenced above, enter the name, the PFI and facility type in the chart below.

	FACILITY NAME:	PFI	FACILITY TYPE
1	St. Elizabeth Certified Home Care	4720	CHH
2	St. Elizabeth Medical Center	0598	HOS
3	Faxton St. Luke's HealthCare-Faxton Campus	597	HOS
4	Faxton St. Luke's Healthcare-St. Luke's Campus	599	HOS
5	St. Luke's Home	6057	NH
6	Mohawk Valley Home Care, LLC	1387 L001	LNH
7	Visiting Nurse Association of Utica and Oneida County, Inc.	1878 & 3055	CHH
8	Senior Network Health, LLC		OTH
9	(operating certificates in attachment B)		
10			
11			
12			
13			
14			
15			
16			

**New York State Department of Health
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Schedule 1C

In addition to the information provided on the above chart, provide a complete list of all health care, adult care, behavioral, or mental health facilities, programs or agencies located outside New York State that are affiliated with the applicant corporation, as well as with parent, member and subsidiary corporations. For each health care entity identified, provide the full name, address, and type of services provided. In conjunction with this list, provide documentation from the regulatory agency in the state(s) where affiliations are noted, reflecting that the facilities/programs/agencies have operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of the affiliation, whichever is shorter). To assist you in securing this information, a recommended form and a sample letter of inquiry are provided in Schedule 2 D.

Please list the facilities outside of New York State that are owned or controlled by the applicant:

	FACILITY NAME AND ADDRESS:	Services provided:	STATE/ COUNTRY	FACILITY TYPE
1	not applicable			
2				
3				
4				
5				
6				
7				
8				
9				
10				

**New York State Department of Health
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Schedule 2 - Worksheet

Table 2A-1 Personal Information Tracking

* Refer to the instructions on Worksheet Pages 1 and 2 to determine who should submit Schedule 2 and then enter the names accordingly on the following worksheet. Attach additional sheets if necessary. Attachment #2A-1.1.

Legal Operator - List Stockholder(s), Officer(s), Director(s), LLC Member(s) or Directors or Manager(s) or Partners(s) Under Each Entity Named	Title or Position That Requires This Individual to Submit Schedule 2	Mark "X" if Required to Submit this Schedule		
		2A	2B	2C
MVEC HOLDINGS, LLC	MEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Norman Neslin, M.D.	Member	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Pavelock, M.D.	Member	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bradley Sklar, M.D.	Member	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Richard Cherpak, M.D.	Member	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brett Gandhi, M. D.	Member	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Garth Garramone, D.O.	Member	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stanley Weiselberg, M.D.	Member	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FAXTON ST. LUKE'S HEALTHCARE	MEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gregory B. McLean	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Richard Tantillo	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Todd Hutton, PhD	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Stephen Sweet	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Scott H. Perra, FACHE	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Domenic P. Aiello	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Esther Bankert, PhD	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SCHEDULES 2C AND 2D ARE NOT APPLICABLE FOR THIS APPLICATION		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* Please note exception for CHHAs on prior pages.

**New York State Department of Health
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Schedule 2 - Worksheet

Table 2A-1 Personal Information Tracking

* Refer to the instructions on Worksheet Pages 1 and 2 to determine who should submit Schedule 2 and then enter the names accordingly on the following worksheet. Attach additional sheets if necessary. Attachment #2A-1.1.

Legal Operator - List Stockholder(s), Officer(s), Director(s), LLC Member(s) or Directors or Manager(s) or Partners(s) Under Each Entity Named	Title or Position That Requires This Individual to Submit Schedule 2	Mark "X" if Required to Submit this Schedule		
		2A	2B	2C
Sidney J. Blatt, M.D.	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Martin D. Bull	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Joan Compson	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Leroy Cooley, M.D.	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
John L. Crossley	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
James E. Frederick, M.D.	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gary E. Gildersleeve	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Karen Leach	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Christopher Max, M.D.	Board Member	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Roger McReynolds	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Michael Paparone	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
William Parker, M.D.	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
James B. Stewart	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bonnie Woods	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ST. ELIZABETH MEDICAL CENTER	MEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Richard F. Zweifel	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SCHEDULES 2C AND 2D ARE NOT APPLICABLE FOR THIS APPLICATION		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* Please note exception for CHHAs on prior pages.

**New York State Department of Health
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Schedule 2 - Worksheet

Table 2A-1 Personal Information Tracking

* Refer to the instructions on Worksheet Pages 1 and 2 to determine who should submit Schedule 2 and then enter the names accordingly on the following worksheet. Attach additional sheets if necessary. Attachment #2A-1.1.

Legal Operator - List Stockholder(s), Officer(s), Director(s), LLC Member(s) or Directors or Manager(s) or Partners(s) Under Each Entity Named	Title or Position That Requires This Individual to Submit Schedule 2	Mark "X" if Required to Submit this Schedule		
		2A	2B	2C
ST. ELIZABETH MEDICAL CENTER (CONTINUED)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Catherine McDonough Cominsky	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Raymond A. Meier	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gregory P. Evans	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Norman I. Siegel	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Richard H. Ketcham	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Eric B. Yoss	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Harrison J. Hummel, III.	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Steven M. Williams, M.D.	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Marianne W. Gaige	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fred Talarico, M.D.	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Donna J. McGartland	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Alfred D. Matt	Board Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHEDULES 2C AND 2D ARE NOT APPLICABLE FOR THIS APPLICATION		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* Please note exception for CHHAs on prior pages.

Schedule 3B – Basic Legal Information and Documentation

Instructions:

1. The following applicants must complete Part I in its entirety:
 - a. All Article 7 applicants.
 - b. Article 28 applicants seeking establishment or combined establishment and construction approval.
 - c. Article 36 applicants seeking establishment approval.
 - d. Article 40 applicants seeking establishment approval.

2. The appropriate section of Part II must also be completed, depending on the applicant's type of legal entity, as follows:
 - a. Applicants that are sole proprietors must complete Section A.
 - b. Applicants that are general partnerships must complete Section B.
 - c. Applicants that are registered limited liability partnerships must complete Section C.
 - d. Applicants that are not-for-profit corporations must complete Section D.
 - e. Applicants that are business corporations must complete Section E
 - f. Applicants that are limited liability companies must complete Section F.

3. All Article 28 applicants must complete Part III in its entirety.

N.B.: Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.

I. All Applicants

- A. Is the name of the facility different from the name of the applicant's legal entity?
 Yes No

If yes, submit the Certificate of Assumed Name. Attachment #1.

- B. Is the applicant a natural person? Yes No

If no, type of legal entity:

- Sole Proprietor (See II.A. below)
 General Partnership (See II.B below)
 Registered Limited Liability Partnership (See II.C below)
 Not-for-Profit Corporation (See II.D below)
 Business Corporation (See II.E below)
 Limited Liability Company (See II.F below)
 Other, specify

- C. For Article 36 applicants only: Does the applicant have any partners, members or stockholders that are not natural persons?
 Yes No

If yes, the applicant must comply with the requirements of PHL 3611.

- D. For Article 36 business corporations only: Is the corporation publicly traded?
 Yes No

If yes, submit the most recently filed Securities Exchange Commission Form 10K.
 Attachment #

E. Submit documentation of how the applicant has or will obtain site control. Lease agreements for Article 28 facilities, and for hospice residences and the inpatient components of Article 40 facilities, must contain the language set forth in 10 NYCRR 600.2(d) or 790.2(d), respectively. Attachment # 2 (Lease Agreement).

F. Are any of the directors or owners (partners, stockholders or members) of the applicant physicians who are in a position to make referrals to the facility?
 Yes No

If yes, submit a signed statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.
 Attachment # 3 (Anti-Kickback Statement).

G. Submit an organizational chart showing the applicant's legal structure.
 Attachment # 4 (Organizational Chart).

H. Does the applicant intend to enter into any agreement(s) involving the management, administrative, billing and/or consulting services for the facility, including, but not limited to, operational policies.
 Yes No

If yes, submit the proposed agreement(s) and the remaining questions in this part I.
 Attachment #

If no, skip to Part II as applicable.

I. Has the proposed management entity previously received establishment approval under either Article 7, 28, 36 or 40 of the PHL?
 Yes No

J. Enter on the following chart, the addresses of the facilities/agencies owned, operated or managed by the proposed management entity and the time period that each was owned, operated or managed by the proposed management entity. Include out-of-state entities. Attach additional sheets, if necessary.
 Attachment # N/A.

Facility Name	Type of Facility	Facility Address	Time Period Owned or Managed

K. For each facility named in Question J above, documentation must be submitted reflecting its current and past compliance with the applicable regulations in the state in which it operates. This information is required for the most recent ten-year period, or for the period it was owned, operated or managed by the proposed management entity, whichever is less. See Schedule 2D for instructions on how to acquire this documentation.

- L. Has the proposed management entity been the subject of an administrative action related to the ownership, operation or management of any health care facility or agency?
 Yes No

If yes, provide further details regarding the administrative action in the space below.

- M. Are there any criminal actions pending against the proposed management entity?
 Yes No

If yes, provide further details regarding the criminal action in the space below.

- N. Are there now or have there been any civil or administrative actions initiated by either the Medicare or Medicaid programs against the proposed management entity?
 Yes No

If yes, provide further details regarding the administrative action in the space below.

II. Additional Documentation Depending on Type of Legal Entity

Submit the following legal documentation as applicable for the applicant's type of legal entity.

A. Sole Proprietors

1. Name of Individual Proprietor:

2. Certificate of Doing Business: Attachment # .

3. Schedules 2A and 2B

B. General Partnerships

1. On the following chart, list the partners, partnership interest and percentage ownership for each partner: Attach additional sheets if necessary.
 Attachment # .

Partner Name	Partnership Interest	Percentage Ownership

2. Partnership Agreement: Attachment # .
3. Certificate of Doing Business as a Partnership: Attachment # .
4. Schedules 2A and 2B for each partner

N.B. Partnership agreements for Article 28, Article 36 and Article 40 applicants must contain the language set forth in 10 NYCRR 600.1(5)(ii), 760.2 (c)(2) or 790.1 (c)(2), respectively. Refer to Schedule 12B, Part II for language that must be included in partnership agreements for Article 7 general partnerships.

C. Registered Limited Liability Partnerships

1. On the following chart, list the partners, partnership interest and percentage ownership for each partner: Attach additional sheets if necessary.
 Attachment # .

Partner Name	Partnership Interest	Percentage Ownership

2. Partnership Agreement: Attachment # .
3. Certificate of Doing Business as a Partnership: Attachment # .
4. Certificate of Registration: Attachment # .
5. Schedules 2A and 2B for each partner

N.B. Registered limited liability partnerships are not a proper entity for adult care facilities. See 600.1(5)(ii) of 10 NYCRR for language that must be included in partnership agreements for Article 28 registered limited liability partnerships.

D. Not-for-Profit Corporations

1. Does the corporation have any members? Yes No

If yes, list the names of the members below.

2. On the following chart, list the names of the officers and directors of the applicant corporation and indicate the position held by each. Attach additional sheets if necessary. Attachment # .

Officer/Director Name	Position Held

3. Certificate of Incorporation: Attachment # .
4. Bylaws: Attachment # .
5. If the applicant is not a New York corporation, Application for Authority to Do Business in New York: Attachment # .
6. Schedule 2A for each director
7. Schedule 2B for directors who contribute capital in support of the project
8. Schedule 2C for directors who do not contribute capital in support of the project

E. Business Corporations

1. On the following chart, list the stockholders, stock interest and percentage of ownership for each stockholder. Attach additional sheets if necessary. Attachment # .

Stockholder Name	Stock Interest	Percentage Ownership

2. On the following chart, list the names of the officers and directors of the applicant corporation and indicate the position held by each. Attach additional sheets if necessary. Attachment # .

Officer/Director Name	Position Held

3. Certificate of Incorporation: Attachment # .
4. Bylaws: Attachment # .
5. If the applicant is not a New York corporation, Application for Authority to Do Business in New York: Attachment # .
6. Schedule 2A for each officer, director and stockholder
7. Schedule 2B for each stockholder

N.B. Only stockholders who own ten percent or more of a certified home health agency's issued stock must submit Schedule 2B. Stockholders of all other applicants, regardless of percentage ownership, must submit Schedule 2B.

F. Limited Liability Companies

1. On the following chart, list the members, membership interest and percentage of ownership for each member. Attach additional sheets if necessary. Attachment # .

Member Name	Membership Interest	Percentage Ownership
MVEC Holdings, LLC	60 Units	60%
Faxton St. Luke's Healthcare	20 Units	20%
St. Elizabeth Medical Center	20 Units	20%

2. List the managers below.

None; the Applicant is member-managed

3. Articles of Organization: Attachment # 5 (current Articles of Organization and proposed Amended and Restated Articles of Organization).
4. Operating Agreement: Attachment # 6 (current Operating Agreement and proposed Amended and Restated Operating Agreement).

5. If the applicant is not a New York limited liability company, Application for Authority to Do Business in New York: Attachment # N/A.
6. Schedule 2A for each member and manager
7. Schedule 2B for each member

N.B. Only members who own ten percent or more of a CHHA's membership interest must submit Schedule 2B. Members of all other applicants, regardless of percentage of ownership, must submit Schedule 2B.

III. Representative Governance

A. Ownership

1. Is the applicant, or any of its owners, employed by, an owner, officer, director, or manager of, or in any way affiliated with, or acting on behalf, or for the benefit of, an outside entity which will be involved with (including through a lease, contract or agreement), or benefit from, the ownership or operation of the proposed facility?
 Yes No

If yes, in the space below, identify the outside entity and the nature of the relationship.

The owners of MVEC Holdings, LLC own 116 Business Park Associates, LLC which will lease space in the 116 Business Park building to the Applicant for the surgery center.

2. Are there any contractual restrictions, existing or proposed, on the ability of the owners of the applicant to assign, transfer or sell their ownership interests or voting rights in the applicant? Yes No

If yes, provide copies of the existing or proposed arrangements.
Attachment # See Attachment 6.

B. Consulting/Administrative Agreements

1. Does this proposal include a consulting or administrative agreement?
 Yes No

If no, skip to Section C.

If yes, attach a copy of this agreement (if not already submitted with the CON), and continue with the questions in this section.

Attachment # .

2. Describe in the space below the services to be provided under the agreement.

3. Describe in the space below the relationship between the applicant/operator and the consultant.

4. Who/what owns the consultant entity?

[Empty text box]

5. Who will manage the subject facility on a day-to-day business?

[Empty text box]

6. Who employs the facility manager?

[Empty text box]

7. Will there be any subcontracts or assignments with other entities?

Yes No

If yes, attach copies of the agreements. Attachment # [Empty text box].

Describe the agreements:

[Empty text box]

8. What percentage of facility revenues flow to the consultant?

[Empty text box] %

9. Is the consultant also an equipment lessor for the facility?

Yes No

10. Is the consultant a real property lessor for the facility?

Yes No

11. Who is responsible for financial decisions and by whom is this person is employed?

[Empty text box]

C. Financing

Will another entity provide financing for this CON project?

Yes No

If yes, define the lender and it relationship to the applicant and consultant.

The Applicant will obtain financing from a commercial bank in an arms-length financing transaction. There are no other relationships between the Applicant and the lender .

Completed by:

Enter Name:

Garth J. Garramone, DO

New York State Department of Health
Certificate of Need Application

Schedule 3B

Enter Date:

October15, 2010

SCHEDULE 3B ATTACHMENTS

Complete the section labeled "All Applicants." Then, check the box(es) that apply to your organizational structure and enter the corresponding information for each attached document. If the document is not applicable, enter "N/A" in the column labeled "Attachment Title."

DOCUMENT	ATTACHMENT TITLE	ATTACH #	ELECTRONIC FILE NAME*
ALL APPLICANTS			
Certificate of Assumed Name		1	
Form SEC 10K	NA		
Documentation of Site Control		2	
Anti-Kickback Statement		3	
Organizational Chart		4	
Management Agreement	NA		
List of Out-of-State Entities	NA		
<input type="checkbox"/> SOLE PROPRIETORS			
Certificate of Doing Business			
<input type="checkbox"/> GENERAL PARTNERSHIPS			
List of Additional Partners			
Partnership Agreement			
Certificate of Doing Business as a Partnership			
<input type="checkbox"/> REGISTERED LIMITED LIABILITY PARTNERSHIPS			
List of Additional Partners			
Partnership Agreement			
Certificate of Doing Business as a Partnership			
Certificate of Registration			
<input type="checkbox"/> NOT-FOR-PROFIT CORPORATIONS			
List of Additional Officers & Directors			
Certificate of Incorporation			
Bylaws			
Application for Authority to do Business in NYS			

* PDF Format Preferred

SCHEDULE 3B ATTACHMENTS (continued)

DOCUMENT	ATTACHMENT TITLE	ATTACH #	ELECTRONIC FILE NAME*
<input type="checkbox"/> BUSINESS CORPORATIONS			
List of Additional Stockholders			
List of Additional Officers & Directors			
Certificate of Incorporation			
Bylaws			
Application for Authority to do Business in NYS			
<input checked="" type="checkbox"/> LIMITED LIABILITY COMPANIES			
List of Additional Members	NA		
Articles of Organization		5	
Operating Agreement		6	
Application for Authority to do Business in NYS	NA		
<input checked="" type="checkbox"/> REPRESENTATIVE GOVERNANCE			
Restrictions on Ability of Applicant to Assign Ownership	See Attachment 6		
Consulting/Administrative Agreement	NA		
Subcontracts or Assignments with Other Entities	NA		
OTHER ATTACHMENTS (SPECIFY)			

* PDF Format Preferred

Working Capital Financing Plan

1. Working Capital Financing Plan and Pro Forma Balance Sheet:

This section should be completed in conjunction with the monthly Cash Flow. The general guidelines for working capital requirements are two months of first year expenses for changes of ownership and two months' of third year expenses for construction projects. Any deviation from these guidelines must be supported by the monthly cash flow analysis. If working capital is required for the project, all sources of working capital must be indicated clearly. Borrowed funds are limited to 50% of total working capital requirements. If borrowed funds are a source of working capital, please summarize the terms below, and attach a letter of interest from the intended source of funds, to include an estimate of the principal, term, interest rate and payout period being considered. Also, describe and document the source(s) of working capital equity.

List Titles of Attachments related to Borrowed Funds	List Filenames of Attachments
Attachment 7: Bank Letter of Interest	N/A

In the section below, briefly describe and document the source(s) of working capital equity

The total amount of working capital needed based on two months of third year expenses is \$438,691. Fifty percent of the working capital requirement, \$219,345, will be borrowed from a bank with a fixed five-year loan with an estimated interest rate of 6%.

The project owners will contribute funds for the remaining 50 percent, proportional to their ownership of the ASC. Detailed information on contribution by individual owner can be found in Attachment 11, Sources of Cash.

2. Pro Forma Balance Sheet

This section should be completed for all new establishment and change in ownership applications. On a separate attachment identified below, provide a pro forma (opening day) balance sheet. If the operation and real estate are to be owned by separate entities, provide a pro forma balance sheet for each entity. Fully identify all assumptions used in preparation of the pro forma balance sheet. If the pro forma balance sheet(s) is submitted in conjunction with a change in ownership application, on a line-by-line basis, provide a comparison between the submitted pro forma balance sheet(s), the most recently available facility certified financial statements and the transfer agreement. Fully explain and document all assumptions.

List Titles of Attachments Related to Pro Forma Balance Sheets	List Filenames of Attachments
Attachment 8: Pro Forma Balance Sheet	N/A

Architectural Submission

This Schedule applies to projects with construction, including Articles- 28, 36 & 40, i.e., Hospitals, D&TCs, RHCs, CHHAs, LTHHCPs and Hospices.

Instructions: Attachments should be saved or scanned as PDF documents. Most scanners will create this format. The PDF document should be assigned a unique name, so it will not be confused with any other attachment. The title of the attachment, and name of the attached PDF file should be entered in the table below.

Subject of attachment:		Title of Attachment	Filename of attachment - PDF format preferred.
	Example: - attachment in PDF format	Architecture Attachment A	Architecture_attach_A.pdf
A.	Functional space program/analysis for this project. (Required for all construction projects):	Attachment A Architectural Submission	
B.	Architectural narrative that delineates the project scope of the work to meet the determined program needs.	Attachment A Architectural Submission	
C.	Conceptual drawings that complement the architectural narrative.	Attachment A Architectural Submission	
D.	Architect's or Engineer's Letter of Certification for Proposed Construction.	Attachment A Architectural Submission	
E.	Does the project involve Radiation producing equipment?		
	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
	If yes, a Physicist's Report and drawings must be attached.		

Environmental Assessment

Part I.

The following questions help determine whether the project is "significant" from an environmental standpoint.

1.	If this application involves establishment, will it involve more than a change of name or ownership only, or a transfer of stock or partnership or membership interests only, or the conversion of existing beds to the same or lesser number of a different level of care beds?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
2.	Does this plan involve construction and change land use or density?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
3.	Does this plan involve construction and have a permanent effect on the environment if temporary land use is involved?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
4.	Does this plan involve construction and require work related to the disposition of asbestos?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

Part II.

If any question in Part I is answered "yes" the project may be significant and Part II must be completed. If all questions in Part II are answered "no" it is likely that the project is not significant.

1.	Does the project involve physical alteration of ten acres or more?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
2.	If an expansion of an existing facility, is the area physically altered by the facility expanding by more than 50% and is the total existing and proposed altered area ten acres or more?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
3.	Will the project involve use of ground or surface water or discharge of wastewater to ground or surface water in excess of 2,000,000 gallons per day?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
4.	If an expansion of an existing facility, will use of ground or surface water or discharge of wastewater by the facility increase by more than 50% and exceed 2,000,000 gallons per day?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
5.	Will the project involve parking for 1,000 vehicles or more?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
6.	If an expansion of an existing facility, will the project involve a 50% or greater increase in parking spaces and will total parking exceed 1000 vehicles?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
7.	In a city, town, or village of 150,000 population or fewer, will the project entail more than 100,000 square feet of gross floor area?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
8.	If an expansion of an existing facility in a city, town, or village of 150,000 population or fewer, will the project expand existing floor space by more than 50% so that gross floor area exceeds 100,000 square feet?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
9.	If an expansion of an existing facility in a city, town, or village of more than 150,000 population, will the project entail more than 240,000 square feet of gross floor area?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

10.	If an expansion of an existing facility in a city, town, or village of more than 150,000 population, will the project expand existing floor space by more than 50% so that gross floor area exceeds 240,000 square feet?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
11.	In a locality without any zoning regulation about height, will the project contain any structure exceeding 100 feet above the original ground area?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
12.	Is the project wholly or partially within an agricultural district certified pursuant to Agriculture and Markets Law Article 25, Section 303?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
13.	Will the project significantly affect drainage flow on adjacent sites?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
14.	Will the project affect any threatened or endangered plants or animal species?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
15.	Will the project result in a major adverse effect on air quality?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
16.	Will the project have a major effect on visual character of the community or scenic views or vistas known to be important to the community?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
17.	Will the project result in major traffic problems or have a major effect on existing transportation systems?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
18.	Will the project regularly cause objectionable odors, noise, glare, vibration, or electrical disturbance as a result of the project's operation?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
19.	Will the project have any adverse impact on health or safety?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
20.	Will the project affect the existing community by directly causing a growth in permanent population of more than five percent over a one-year period or have a major negative effect on the character of the community or neighborhood?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
21.	Is the project wholly or partially within, or is it contiguous to any facility or site listed on the National Register of Historic Places, or any historic building, structure, or site, or prehistoric site, that has been proposed by the Committee on the Registers for consideration by the New York State Board on Historic Preservation for recommendation to the State Historic Officer for nomination for inclusion in said National Register?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
22.	Will the project cause a beneficial or adverse effect on property listed on the National or State Register of Historic Places or on property which is determined to be eligible for listing on the State Register of Historic Places by the Commissioner of Parks, Recreation, and Historic Preservation?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
23.	Is this project within the Coastal Zone as defined in Executive Law, Article 42?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

Part III.

Must be completed if any question on Part II was answered "Yes".

1. List all other state or local agencies involved in approval of the project.	
NONE	
2. Has any other agency made an environmental review of this project? If so, give name	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
3. Is there a public controversy concerning environmental aspects of this project? If yes, briefly describe the controversy in the space below.	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

**New York State Department of Health
 Certificate of Need Application
 Schedule 8A Summarized Project Cost and Construction Dates**

This schedule is required for all Establishment Applications and Full or Administrative Review Construction Applications.

1.) Project Cost Summary data:

	Total	Source
Project Description:		
Project Cost	\$3,899,300	Schedule 8a or 8b, column C, line 8
Total Basic Cost of Construction	\$3,899,300	from Schedule 8a or 8b column C, line 6
Total Cost of Moveable Equipment	\$1,300,000	Schedule 8a or 8b, column C, line 5.1
Cost/Per Square Foot for New Construction (calculated on Table 10)	Not Applicable	Schedule 10
Cost/Per Square Foot for Renovation Construction	Not Applicable	Schedule 10
Total Incremental Operating Cost (From Schedule 13C, 17C, or 19D)	\$2,381,979	Schedule 13c, 17c or 19d
Amount Financed (as \$)	\$3,110,972	Schedule 9
Percentage Financed as % of Total Cost (From Schedule 9)	79%	from Schedule 9
Depreciation Life (in years)	7 (equipment) 15 (facility improvements)	

2) Construction Dates

Anticipated Start Date	2/1/11	from Schedule 8b,
Anticipated Completion Date	8/1/11	

**New York State Department of Health
Certificate of Need Application**

Schedule 8B - Total Project Cost - For Projects without Subprojects.

For Article 28, 36, and 40 Establishment & Construction Requiring Full, Administrative or Limited Review
For Limited Review, escalation amounts may be entered as "0".

Constants:	Value	Comments:
Design Contingency - New Construction	%	Normally 10%
Construction Contingency - New Construction	0.00%	Normally 5%
Design Contingency - Renovation Work	10.00%	Normally 10%
Construction Contingency - Renovation Work	10.00%	Normally 10%
Construction Start Date:	2/1/2011	as mm/dd/yyyy
Midpoint of Construction Date		as mm/dd/yyyy
Completion of Construction Date	8/1/2011	as mm/dd/yyyy
Year used to compute Current Dollars:	2010	

Subject of attachment:	Attachment Number	Filename of attachment -
For new construction and addition, at the schematic stage the design contingency will be normally be 10% and the construction contingency will be 5%. If your percentages are otherwise, please explain in an attachment	N/A	
For renovation, the design contingency will normally be 10% and the construction contingency will be 10%. If your percentages are otherwise, please explain in an attachment	N/A	

New York State Department of Health
 Certificate of Need Application
 Schedule 8B - Total Project Cost - For Projects without Subprojects.

	A	B	C
Item	Project Cost in Current Dollars	Escalation amount to Mid-point of Construction	Estimated Project Costs
Source:	Schedule 10 Col. 7	Computed by applicant	(A + B)
1.1 Land Acquisition	\$0		\$0
1.2 Building Acquisition	\$0		\$0
			\$0
2.1 New Construction	\$0	\$0	\$0
2.2 Renovation & Demolition	\$1,732,750	\$0	\$1,732,750
2.3 Site Development	\$0	\$0	\$0
2.4 Temporary Utilities	\$0	\$0	\$0
2.5 Asbestos Abatement or Removal	\$0	\$0	\$0
			\$0
3.1 Design Contingency	\$173,275	\$0	\$173,275
3.2 Construction Contingency	\$173,275	\$0	\$173,275
			\$0
4.1 Fixed Equipment (NIC)	\$0	\$0	\$0
4.2 Planning Consultant Fees	\$140,000	\$0	\$140,000
4.3 Architect/Engineering Fees	\$200,000	\$0	\$200,000
4.4 Construction Manager Fees	\$0	\$0	\$0
4.5 Other Fees (Consultant, etc.)	\$180,000	\$0	\$180,000
Subtotal (Total 1.1 thru 4.5)	\$2,599,300	\$0	\$2,599,300
5.1 Movable Equipment (from Sched 11)	\$1,300,000	\$0	\$1,300,000
5.2 Telecommunications	\$0	\$0	\$0
6. Total Basic Cost of Construction (total 1.1 thru 5)	\$3,899,300	\$0	\$3,899,300
7.1 Financing Costs (Points etc)	\$0		\$0
7.2 Interim Interest Expense:			
\$ <input type="text"/> %	\$0		\$0
8. Total Project Cost: w/o CON fees - Total 6 thru 7.2	\$3,899,300	\$0	\$3,899,300
Application fees:			
9.1 Application Fee \$2,000	\$2,000		\$2,000
9.2 Additional Processing Fee for Article 28 projects involving Construction. (.0055 x line 8) D&TC	\$21,446		\$21,446
10 Total Project Cost with CON fees	\$3,922,746	\$0	\$3,922,746

Schedule 9 Proposed Plan for Project Financing

I. Summary of Proposed Financial Plan:

Check all that apply and fill in corresponding amounts.

	Type	Amount
X	A. Lease / Equipment	\$ 800,000
X	B. Cash	\$ 811,774
	C. Land	
	D. Other	
X	E. Mortgage, Notes, or Bonds	\$ 2,310,972
	F. Refinancing	
	Total Mortgage / Notes / Bonds plus Refinancing (E + F)	\$ 2,310,972
	Total Project Financing (Sum A to F)	\$ 3,922,746

II. Details

A. Leases

	Not Applicable	Title of Attachment
1. List each lease with corresponding cost as if purchased each leased item. Breakdown each lease by total project cost and subproject costs, if applicable.		#9 Equipment Leases
2. Attach a copy of the proposed lease(s).		#2 Facility Lease
3. Submit an affidavit indicating any business or family relationships between principals of the landlord and tenant	X	
4. If applicable, provide a copy of the lease assignment agreement and the Landlord's consent to the proposed lease assignment	X	
5. If applicable, identify separately the total square footage to be occupied by the Article 28 facility and the total square footage of the building	X	
6. Attach two letters from independent realtors verifying square footage rate.		#10 Realtor Letters
7. For all capital leases as defined by FASB Statement No. 13, "Accounting for Leases", provide the net present value of the monthly, quarterly or annual lease payments.	X	

B. Cash

Type	Amount
Accumulated Funds	
Sale of Existing Assets	
Gifts (fundraising program)	
Government Grants	
Other: Initial Owner Equity	\$ 811,774
TOTAL CASH	\$ 811,774

	Not Applicable	
1. Provide a breakdown of the sources of cash. See sample table above.		#11, Sources of Cash
2. Attach a copy of the latest certified financial statement and interim monthly or quarterly financial reports to cover the balance of time to date.	X	
3. If amounts are listed in "Accumulated Funds" provide cross-reference to certified financial statement or Schedule 2b, if applicable.	X	
4. Attach a full and complete description of the assets to be sold, if applicable.	X	
5. If amounts are listed in "Gifts (fundraising program)": • Provide a breakdown of total amount expected, amount already raised, and any terms and conditions affixed to pledges. • If a professional fundraiser has been engaged, submit fundraiser's contract and fundraising plan. • Provide a history of recent fund drives, including amount pledged and amount collected	X	
6. If amounts are listed in "Government Grants": • List the grant programs which are to provide the funds with corresponding amounts. Include the date the application was submitted. • Provide documentation of eligibility for the funds. • Attach the name and telephone number of the contact person at the awarding Agency(ies).	X	
7. If amounts are listed in "Other" attach a description of the source of financial support and documentation of its availability.	X	
8. Current Department policy requires a minimum equity contribution of 10% of total project cost (Schedule 8b line 10).		

C. Mortgage, Notes, or Bonds -- Not required for limited review

Equipment Loan

	Total Project	Units
Interest	5.99%	%
Term	7	Years
Payout Period	N/A	Years
Principal	\$ 500,000	\$

Facility Improvement Loan

	Total Project	Units
Interest	6.00%	%
Term	15	Years
Payout Period	N/A	Years
Principal	\$ 1,810,972	\$

	Not Applicable	Title of Attachment
2. Attach a copy of a letter of interest from the intended source of permanent financing that indicates principal, interest, term, and payout period.		#7, Bank Letter of Interest
3. If New York State Dormitory Authority (DASNY) financing, then attach a copy of a letter from a mortgage banker.	X	
4. If the financing of this project becomes part of a larger overall financing, then a new business plan inclusive of a feasibility package for the overall financing will be required for DOH review prior to proceeding with the combined financing.	X	

D. Land -- Not required for limited review

NOT APPLICABLE

E. Other -- Not required for limited review

NOT APPLICABLE

F. Refinancing -- Not required for limited review

NOT APPLICABLE

**New York State Department of Health
 Certificate of Need Application
 Schedule 10 - Space & Construction Cost Distribution**

For Article 28, 36, and 40 Construction Projects Requiring Full, Administrative or Limited Review * Codes for completing this table are found in Schedule 10 lookups sheet.(see tab below)

Indicate if this project is: New Construction: Renovation:

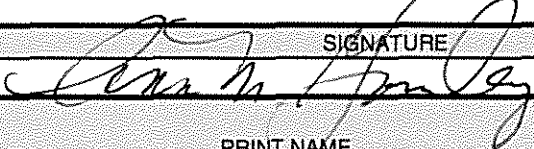
Location				Functional Code	Description of Functional Code (enter Functional code in Column D, description appears here automatically)	Functional Gross SF	Construction cost per SF	Total construction cost	Alterations, Scope of work
Sub project	Building	Floor	Section						
		2		402	Ambulatory Surgery	11436	N/A	N/A	
Totals for Whole Project:						11436	0	0	

**New York State Department of Health
 Certificate of Need Application
 Schedule 10 - Space & Construction Cost Distribution**

1. If New Construction is Involved, is it "freestanding?"	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
---	---------------------------------	---

	Dense Urban <input type="checkbox"/>	Other metropolitan or suburban <input checked="" type="checkbox"/>	Rural <input type="checkbox"/>
2. Check the box that best describes the location of the facilities affected by this project:			

The section below must be filled out and signed by the applicant, applicant's representative, project architect, project engineer or project estimator.engineer,

SIGNATURE		DATE	
		10/15/2010	
PRINT NAME		TITLE	
Ann M. Gormley		Consultant	
NAME OF FIRM			
Empire Health Advisors			
STREET & NUMBER			
60 Railroad Place, Suite 101			
CITY	STATE	ZIP	PHONE NUMBER
Saratoga Springs	NY	12866	518-583-4900

**New York State Department of Health
 Certificate of Need Application
 Schedule 11 - Moveable Equipment**

For Article 28, 36, and 40 Construction Projects Requiring Full or Administrative Review *

Table I: New Equipment Description

Sub project Number	Functional Code	Description, including model, manufacturer, year of manufacture where applicable.	Number of units	Unit Cost	Purchase Price
	Waiting / Prep /				
	Procedure /	Misc. Equipment			\$216,061
	Recovery				
	Procedure Rooms	Scopes			\$778,894
		Electrosurgical generators			\$55,172
		Medivator Reprocessors			\$122,945
		Endoscopy Software			\$50,000
	General	Locker room / Library Equipment	1	\$ 11,571	\$11,571
		Communication System	1	\$ 18,313	\$18,313
		Computer Network	1	\$ 47,044	\$47,044
Total Project Equipment Costs:					\$ 1,300,000

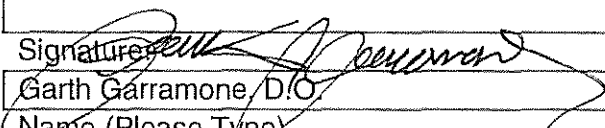
Schedule 13 A. Assurances From Article 28 Applicants

Article 28 applicants seeking combined establishment and construction or construction approval only must complete this schedule.

The undersigned, as a duly authorized representative of the applicant, hereby gives the following assurances:

- a) The applicant has or will have a fee simple or such other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure use and possession for the purpose of the construction and operation of the facility.
- b) The applicant will obtain the approval of the Commissioner of Health of all required submissions, which shall conform to the standards of construction and equipment in Subchapter C of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (Title 10).
- c) The applicant will submit to the Commissioner of Health final working drawings and specifications, which shall conform to the standards of construction and equipment of Subchapter C of Title 10, prior to contracting for construction, unless otherwise provided for in Title 10.
- d) The applicant will cause the project to be completed in accordance with the application and approved plans and specifications.
- e) The applicant will provide and maintain competent and adequate architectural and/or engineering inspection at the construction site to insure that the completed work conforms to the approved plans and specifications.
- f) If the project is an addition to a facility already in existence, upon completion of construction all patients shall be removed from areas of the facility that are not in compliance with pertinent provisions of Title 10, unless a waiver is granted by the Commissioner of Health, under Title 10.
- g) The facility will be operated and maintained in accordance with the standards prescribed by law.
- h) The applicant will comply with the provisions of the Public Health Law and the applicable provisions of Title 10 with respect to the operation of all established, existing medical facilities in which the applicant has a controlling interest.
- i) The applicant understands and recognizes that any approval of this application is not to be construed as an approval of, nor does it provide assurance of, reimbursement for any costs identified in the application. Reimbursement for all cost shall be in accordance with and subject to the provisions of Part 86 of Title 10.

Date 11/10/09

Signature 
 Garth Garramone, D.O.
Name (Please Type)
 LLC Member
Title (Please type)

**New York State Department of Health
Certificate Of Need Application**

Schedule 13B

Schedule 13 B. Staffing

Table 13B - 1:

For Establishment and/or Construction Requiring Full/Administrative Review

XX Total Project

___ Subproject number

A	B	C	D
	Number of FTEs to the Nearest Tenth		
Staffing Categories	Current Year	First Year of Implementation (2010/11)	Third Year of Implementation (2012/13)
	(1)	(2)	(3)
1. Management & Supervision	N/A	2.2	2.2
2. Technician & Specialist	N/A	3.0	3.0
3. Registered Nurses	N/A	9.0	11.0
4. Licensed Practical Nurses	N/A	0.0	0.0
5. Aides, Orderlies & Attendants	N/A	0.0	0.0
6. Physicians	N/A	0.0	0.0
7. PGY Physicians	N/A	0.0	0.0
8. Physicians' Assistants	N/A	0.0	0.0
9. Nurse Practitioners	N/A	0.0	0.0
10. Nurse Midwife	N/A	0.0	0.0
11. Social Workers and Psychologist**	N/A	0.0	0.0
12. Physical Therapists and PT Assistants	N/A	0.0	0.0
13. Occupational Therapists and OT Assistants	N/A	0.0	0.0
14. Speech Therapists and Speech Assistants	N/A	0.0	0.0
15. Other Therapists and Assistants	N/A	0.0	0.0
16. Infection Control, Environment and Food Service	N/A	1.0	1.0
17. Clerical & Other Administrative	N/A	4.0	4.0
18. Other Employee Classifications (please specify)	N/A	N/A	N/A
Accounting	N/A	0.5	0.5
19. TOTAL NUMBER OF EMPLOYEES	0.0	19.7	21.7

* Last complete year prior to submitting application

** Use only for RHCF and D & T Center proposals

**New York State Department of Health
Certificate of Need Application**

Schedule 13B

1.) All diagnostic and treatment centers should complete the following section:

Name of medical director:	Garth Garramone, D.O.
License number of the Medical Director	217231-1

	Not Applicable:	Title of Attachment	Filename of attachment
Attach a copy of the medical director's curriculum vitae.	<input type="checkbox"/>	Medical Director C.V.	12

Acute care facility with which an affiliation agreement is being negotiated:	Faxton-St. Luke's Healthcare and St. Elizabeth Medical Center
In the space below, Indicate the status of those negotiations:	
Agreed upon and attached.	

	Not Applicable:	Title of Attachment	Filename of attachment
Attach a copy of a letter of intent or the affiliation agreement, if appropriate.	<input type="checkbox"/>	13	

Distance in miles from the proposed facility to the acute care affiliate.	1.5 miles
Distance in minutes of travel time from the proposed facility to the acute care affiliate.	5 minutes
Name of the acute care facility, nearest the proposed facility:	St. Luke's Hospital
Distance in miles from the proposed facility to the nearest acute care facility:	1.5 miles
Distance in minutes of travel time from the proposed facility to the nearest acute care facility.	5 minutes

**New York State Department of Health
Certificate of Need Application**

Schedule 13B

Table 13B - 2. Ambulatory surgery centers should complete the following Table:

List all practitioners -- including surgeons, Dentists and Podiatrists, who have expressed an interest in practicing at the Center.

NOTE: Attach copies of letters from each giving the number and type of procedures he or she expects to perform per year.

Practitioner's Name	License No.	Specialty (s)	Board Certified or Eligible	Expected Number of Procedures	List hospitals where Physician has Admitting Privileges:	Title and File Name of attachment
Stanley Weiselberg, M.D.	143482-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	875	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Norman Neslin, M.D.	157789-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	850	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Robert Pavelock, M.D.	174776-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	850	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Bradley Sklar, M.D.	179332-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	850	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Richard Cherkpak, M.D.	185866-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	850	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Brett Gandhi, M. D.	183530-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	850	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Garth Garramone, D.O.	217231-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	875	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations

**New York State Department of Health
Certificate Of Need Application**

Schedule 13C

**Schedule 13 C. Annual Operating Costs
For Establishment and/or Construction Requiring Full/Administrative Review**

Use this schedule to summarize the first full year's incremental cost for the categories, which are affected by this project. The first full year is defined as the first 12 months of full operation after project completion. Project the first and third full year's direct incremental costs in current year dollars. (Show only additional operating costs to be incurred during the first full year after project completion). Enter in the column heading the year and month when this period begins and ends."

Total Project
 Subproject Number _____

Categories	Current Year	1st Year Annual Incremental Cost Impact	3rd Year Annual Incremental Cost Impact
	1	2	3
1. Salaries & Wages	N o t A p p l i c a b l e	\$ 925,000	\$ 1,053,014
1a. FTEs		19.7	21.7
2. Employee Benefits		\$ 231,250	\$ 263,254
3. Professional Fees		\$ 90,000	\$ 92,136
4. Medical & Surgical Supplies		\$ 192,000	\$ 233,204
5. Non-medical & Non-surgical Supplies		\$ 20,000	\$ 21,425
6. Utilities		\$ 58,000	\$ 61,532
7. Purchased Services		\$ 24,000	\$ 27,467
8. Other Direct Expenses		\$ 152,000	\$ 162,259
9. Subtotal (total 1 thru 8)		\$ 1,692,250	\$ 1,914,291
10. Interest		\$ 125,261	\$ 153,386
11. Depreciation & Rent		\$ 564,467	\$ 564,467
12. Total Incremental Operating Costs	\$ 2,381,979	\$ 2,632,144	

	Attachment # and Title
1. In an attachment, provide the basis and supporting calculations for depreciation and rent expense.	#15 Depreciation, Interest and Rent Expense
2. In an attachment, provide the basis for interest cost. Separately identify, with supporting calculations, interest attributed to mortgages and working capital.	#15 Depreciation, Interest and Rent Expense

Any approval of this application is not to be construed as an approval of any of the above indicated current or projected operating costs. Reimbursement of any such costs shall be in accordance with and subject to the provisions of Part 86 of 10 NYCRR. Approval of this application does not assure reimbursement of any of the costs indicated therein by payors under Title XIX of the Federal Social Security Act (Medicaid) or Article 43 of the State Insurance Law or by any other payors.

New York State Department of Health
Certificate Of Need Application

Schedule 13D

Table 13D - 1

	a	b	c
Categories	Current Year	Year 1 Incremental Revenue Impact	Year 3 Incremental Revenue Impact
Start date of year in question:(m/d/yyyy)			
1. Daily Hospital Services	N o t A p p l i c a b l e	N/A	N/A
2. Ambulatory Services		\$ 3,377,834	\$ 4,087,719
3. Ancillary Services		N/A	N/A
4. Total Gross Patient Care Services Rendered		\$ 3,377,834	\$ 4,087,719
5. Deductions from Revenue			
6. Net Patient Care Services Revenue		\$ 3,377,834	\$ 4,087,719
7. Other Operating Revenue (Identify sources)			
8. Total Operating Revenue (Total 1-7)		\$ 3,377,834	\$ 4,087,719
9. Non-Operating Revenue		\$ -	\$ -
10. Total Project Revenue		\$ 3,377,834	\$ 4,087,719

Table 13D - 4

Outpatient Services** Source of Revenue	Total Current Year			First Year Incremental			Third Year Incremental		
	Visits	Net Revenue*		Visits	Net Revenue*		Visits	Net Revenue*	
		%	Dollars (\$)		%	Dollars (\$)		%	Dollars (\$)
Commercial Fee for Service				120	2.5%	\$ 84,000	145	2.5%	\$ 101,500
Commercial Managed Care				3,894	74.9%	\$ 2,531,100	4,712	74.9%	\$ 3,062,800
Medicare Fee for Service				1,500	15.9%	\$ 538,362	1,815	15.9%	\$ 651,418
Medicare Managed Care									
Medicaid Fee for Service			A	120	2.0%	\$ 66,757	145	2.0%	\$ 81,750
Medicaid Managed Care			P	240	3.9%	\$ 131,280	290	3.9%	\$ 158,630
Private Pay			P	6	0.1%	\$ 4,800	7	0.1%	\$ 5,600
OASAS			i						
OMH			c						
Charity Care			a	120	0.6%	\$ 21,534	145	0.6%	\$ 26,021
Bad Debt			N						
All Other			b						
Total			t	6,000	100%	\$ 3,377,834	7,259	100%	\$ 4,087,719
Total of Inpatient and Outpatient Services	\$ -					\$ 3,377,834			\$ 4,087,719

Schedule 14A - Additional Legal Information - Article 28 Business Corporations

Instructions:

Article 28 applicants seeking establishment or combined establishment and construction approval that are business corporations must complete this schedule.

N.B.: Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.

Business Corporations:

A. Affidavits: Attach the originals of stockholder affidavits from each stockholder including the specific information set forth in 10 NYCRR 620.1(b).

B. Stock Certificate: Attach a sample stock certificate including the specific language set forth in 10 NYCRR 620.1(a)(4).

N.B.: The Certificate of Incorporation must comply with the language requirements set forth in 10 NYCRR 620.1(a).

C. Limited Liability Corporation Stockholders: Does the applicant have any stockholders that are limited liability companies (LLCs)?

Yes No

If yes, identify each LLC-stockholder in the following table:

Name of LLC Shareholder:	Address

D. Documentation for LLC Stockholders: For each LLC-stockholder (2nd Level Stockholder), attach the following documentation:

1. A list providing the name, membership interest and percentage ownership interest in the 2nd Level Stockholder and indirect ownership percentage in the Article 28 business corporation. (Indirect ownership is determined by multiplying the percentage of ownership in each entity. For example, if A owns 10 percent of a 2nd Level Stockholder which itself owns 80 percent of an Article 28 business corporation, A owns an indirect ownership interest of eight percent in the Article 28 business corporation.) for each member;

N.B.: All members of the 2nd Level Stockholder must be natural persons.

2. A list of all managers;
3. Articles of Organization; and
4. Operating Agreement.

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E. Articles of Organization: In addition to any other provisions required by the Limited Liability Company Law, the Articles of Organization of the 2nd Level Stockholder must include provisions to the following effect:

1. That all members of must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health; and
2. That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(c) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

F. Operating Agreement: The Operating Agreement of the 2nd Level Stockholder must include provisions to the following effect:

- a. That all members must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health;
- b. That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(c) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health; and
- c. That, if the 2nd Level Stockholder will be managed by managers who are not members, the following powers with respect to the ownership and operation of the Article 28 business corporation are reserved to the members of the 2nd Level Stockholder:
 - i. direct independent authority over the appointment or dismissal of hospital management-level employees and medical staff,
 - ii. approval of hospital operating and capital budgets and independent control of the books and records,
 - iii. adoption or approval of hospital operating policies and procedures and independent adoption of policies affecting the delivery of health care services,
 - iv. authority over the disposition of assets and authority to incur liabilities not normally associated with day-today operations,
 - v. approval of certificate of need applications filed by or on behalf of the hospital,
 - vi. approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law,
 - vii. approval of hospital contracts for management or for clinical services, and
 - viii. approval of settlements of administrative proceedings or litigation to which the hospital is a party, and that this provision may not be deleted, modified or amended without the prior approval of the Department of Health.

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SCHEDULE 14A CHECKLIST OF ATTACHMENTS

DOCUMENT	NA	Attached	Attachment number	Electronic Document file name
Business Corporations:				
Stockholder affidavits	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Sample stock certificate	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Stockholder-LLCs	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of members	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of managers	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Articles of Organization	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Operating Agreement	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

Schedule 14B Additional Legal Information Article 28 Limited Liability Companies

Instructions:

Article 28 applicants seeking establishment or combined establishment and construction approval that are *limited liability companies* must complete this Schedule in its entirety.

N.B.: Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.

I. Articles of Organization

Provisions to the following effect must be included:

- A. The name of the LLC which must contain either the words "Limited Liability Company" or the abbreviations "LLC" or "L.L.C.";
- B. Designation of the Secretary of State as agent of the LLC for service of process and an address to which the Secretary of State may mail a copy of any such process;
- C. How the LLC will be managed and that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the New York State Department of Health;
- D. If the LLC will be managed by managers who are not members, that the manager may not be changed without the prior approval of the New York State Department of Health;
- E. That the powers and purposes of the LLC are limited to the ownership and operation of the Article 28 facility specifically named and the location of the facility by street address, city, town, village or locality and county;

N.B.: The powers and purposes may also include the operation of an Article 36 facility, an Article 40 facility and/or an Article 44 entity if the applicant has received all appropriate approvals and certifications.

- F. The location of the principal office of the LLC, which must be the same address as the facility; and
- G. That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of New York State Department of Health membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law.

II. Operating Agreement

Provisions to the following effect must be included:

- A. That the powers and purposes of the LLC are limited to the ownership and operation of the Article 28 facility specifically named and the location of the facility by street address, city, town, village or locality and county;
- B. That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law;
- C. How the LLC will be managed and that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the Department of Health;
- D. If the LLC will be managed by managers who are not members, that the manager may not be changed without the prior approval of the Department of Health; and

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E. If the LLC will be managed by managers who are not members, that the following powers are reserved to the members:

- (i) direct independent authority over the appointment or dismissal of hospital management-level employees and medical staff;
- (ii) approval of hospital operating and capital budgets and independent control of the books and records;
- (iii) adoption or approval of hospital operating policies and procedures and independent adoption of policies affecting the delivery of health care services;
- (iv) authority over the disposition of assets and authority to incur liabilities not normally associated with day-to-day operations;
- (v) approval of certificate of need applications filed by or on behalf of the hospital;
- (vi) approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- (vii) approval of hospital contracts for management or for clinical services; and
- (viii) approval of settlements of administrative proceedings or litigation to which the hospital is a party.

III. Management

Will the applicant be managed by managers who are not members?

Yes No

If yes, attach the proposed Management Agreement between the applicant and the manager, which must meet the following requirements and be approved by the Commissioner.

A. The management agreement must include provisions to the following effect:

- 1. A description of the proposed roles of the members of the Article 28 LLC during the period of the proposed management contract, which must clearly reflect retention by the members of ongoing responsibility for statutory and regulatory compliance,
- 2. A provision that clearly recognizes that the responsibilities of the members of the Article 28 LLC are in no way obviated by entering into a management agreement and that any powers not specifically delegated to the manager through the provisions of the management agreement remain with the members,
- 3. The following powers are reserved to the members of the Article 28 LLC:
 - i. direct independent authority over the appointment or dismissal of hospital management-level employees and medical staff;
 - ii. approval of hospital operating and capital budgets and independent control of the books and records;
 - iii. adoption or approval of hospital operating policies and procedures and independent adoption of policies affecting the delivery of health care services;
 - iv. authority over the disposition of assets and authority to incur liabilities not normally associated with day-to-day operations;
 - v. approval of certificate of need applications filed by or on behalf of the hospital;
 - vi. approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;

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- vii. approval of hospital contracts for management or for clinical services; and
- viii. approval of settlements of administrative proceedings or litigation to which the hospital is a party; and that this provision may not be deleted; modified or amended without the prior approval of the Department of Health.

4. The following language:

"Notwithstanding any other provision in this contract, the facility remains responsible for ensuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, State and local statutes, rules and regulations."

- 5. A plan for assuring maintenance of the fiscal stability, the level of services provided and the quality of care rendered by the facility during the term of the management agreement, and
- 6. Retention of authority by the members of the Article 28 LLC to discharge the manager and its employees from their positions at the facility with or without cause on not more than 90 days' notice. In such event, the facility shall notify the Department in writing at the time the manager is notified. The members of the Article 28 LLC must provide a plan for the operation of the facility subsequent to the discharge of the manager and such plan must be submitted with the notification to the Department.
- 7. That the manager may not be changed and its responsibilities and obligations under the management agreement may not be subcontracted, assigned or otherwise assumed without the prior approval of the Department of Health;

B. The members of the Article 28 LLC must retain sufficient authority and control to discharge its statutory and regulatory responsibility. The following powers must be specifically reserved to the Article 28 LLC members:

- i. Direct independent authority over the appointment or dismissal of the facility's management-level employees and medical staff,
- ii. Approval of the facility's operating and capital budgets and independent control of the books and records,
- iii. Adoption or approval of the facility's operating policies and procedures and independent adoption of policies affecting the delivery of health care services,
- iv. Authority over the disposition of assets and authority to incur liabilities not normally associated with day-to-day operations,
- v. Approval of certificate of need applications filed by or on behalf of the facility,
- vi. Approval of debt necessary to finance the cost of compliance with operational or physical plant standards required by law,
- vii. Approval of the facility's contracts for management or for clinical services, and
- viii. Approval of settlements of administrative proceedings or litigation to which the facility is a party;

C. An Article 28 LLC desiring to be managed by managers who are not members must submit a proposed written management agreement to the Department at least 60 days before the intended effective date, unless a shorter period is approved in writing by the Commissioner, due to extraordinary circumstances. In addition, the Article 28 LLC shall also submit, within the same time frame, the following:

- 1. Documentation demonstrating that the proposed manager holds all necessary approvals to do business within New York,

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2. Documentation of the goals and objectives of the management arrangement, including a mechanism for periodic evaluation by the members of the Article 28 LLC of the effectiveness of the arrangement in meeting those goals and objectives,
3. Evidence of the manager's financial stability,
4. Information necessary to determine that the character and competence of the proposed manager, and its principals, officers and directors, are satisfactory, including evidence that all facilities it has managed within New York have provided a substantially consistent high level of care in accordance with applicable statutes and regulations, during the term of any management agreement contract or the period they held an operating certificate, and
5. Evidence that it is financially feasible for the facility to enter into the proposed management agreement for the term of the agreement and for a period of one year following expiration, recognizing that the costs of the agreement are subject to all applicable provisions of Part 86 of 10 NYCRR. To demonstrate evidence of financial feasibility, the facility shall submit projected operating and capital budgets for the required periods. Such budgets shall be consistent with previous certified financial statements and be subject to future audits;

D. During the period between a facility's submission of a request for initial approval of a management contract and disposition of that request, a facility may not enter into any arrangement for management contract services other than a written interim consultative agreement with the proposed manager. Any interim agreement must be consistent with these provisions and submitted to the Department no later than five days after its effective date.

E. The term of a management contract shall be limited to three years and may be renewed for additional periods not to exceed three years only when authorized by the Commissioner. The Commissioner shall approve an application for renewal provided that compliance with this section and the following provisions can be demonstrated:

1. That the goals and objectives of the arrangement have been met within specified time frames,
2. That the quality of care provided by the facility during the term of the arrangement has been maintained or has improved, and
3. That the level of service to meet community needs and patient access to care and services has been maintained or improved.

IV. Membership Certificates

Does the applicant intend to issue membership certificates?

Yes No

If yes, attach a sample membership certificate including the following legend:

"That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law."

V. Business Corporation Members

Does the applicant have any members which are business corporations?

Yes No

If yes:

A. Identify each business corporation-member (2nd level member) in the following table:

—

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2 nd Level Member:	Address

B. For each business corporation-member, attach the following documentation:

1. A list providing the name, stock interest and percentage ownership interest in the 2nd Level Member and indirect ownership percentage in the Article 28 LLC for each stockholder. (Indirect ownership is determined by multiplying the percentage of ownership in each entity. For example, if A owns 10 percent of a 2nd Level Member which itself owns 80 percent of an Article 28 LLC, A owns an indirect ownership interest of eight percent in the Article 28 LLC.);

N.B.: All stockholders of the 2nd Level Member must be natural persons.

2. A list providing the name and position held for each officer and director; and
3. Certificate of Incorporation. In addition to any other provisions required by the Business Corporation Law, the Certificate of Incorporation of the 2nd Level Member must include provisions to the following effect:
 - a. That all stockholders must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health; and
 - b. That notwithstanding anything to the contrary in the Certificate of Incorporation or the Bylaws, transfers, assignments or other dispositions of ownership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

VI. General or Registered Limited Liability Partnership Members

Does the applicant have any members which are general or registered limited liability partnerships?

Yes No

If yes:

A. Identify each partnership-member (2nd level member) in the following table:

2 nd Level Member:	Address

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2 nd Level Member:	Address

B. For each partnership-member, attach the following documentation:

- 1 A list providing the name, partnership interest and percentage ownership interest in the 2nd Level Member and indirect ownership percentage in the Article 28 LLC for each partner. (Indirect ownership is determined by multiplying the percentage of ownership in each entity. For example, if A owns 10 percent of a 2nd Level Member which itself owns 80 percent of an Article 28 LLC, A owns an indirect ownership interest of eight percent in the Article 28 LLC.); and

N.B.: All partners of the 2nd Level Member must be natural persons.

- 2 The Partnership Agreement of the 2nd Level Member must include provisions to the following effect:
 - a. That all partners must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health;
 - b. That transfers, assignments or other dispositions of partnership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

VII. Not-for-Profit Corporation Members

Does the applicant have any members which are not-for-profit corporations?

Yes No

If yes:

A. Identify each not-for-profit corporation-member (2nd Level Member):

2 nd Level Member:	Address

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2nd Level Member:	Address
Faxton St. Luke's Healthcare	P.O. Box 479 Utica, NY 13503-0479
St. Elizabeth Medical Center	2209 Genesee Street Utica, NY 13501-5999

B. For each not-for-profit corporation-member, attach the following documentation:

- 1 A list providing the name and interest or position held for each member, director, and officer;
- 2 Certificate of Incorporation; and
- 3 Bylaws.

C. Are any of the following powers reserved to any of the corporation's member(s):

Appointment or dismissal of hospital management-level employees and medical staff, except the election or removal of corporate officers.

Yes No

Member:

Approval of hospital operating and capital budgets.

Yes No

Member:

Adoption or approval of hospital operating policies and procedures.

Yes No

Member:

Approval of certificate of need applications filed by or on behalf of the hospital

Yes No

Member:

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If yes, attach documentation of approval for this application.

Approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law.

Yes No

Member:

Approval of hospital contracts for management or for clinical services.

Yes No

Member:

Approval of settlements of administrative proceedings or litigation to which the hospital is a party, except approval of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

Yes No

Member:

N.B.: If any of the corporation's members have been or will be delegated any of these powers, the member itself must have or obtain establishment approval as an active 2nd level member. If so, submit Schedule 2A for each individual listed in item B(1) above. Directors who contribute capital in support of the project must also submit Schedule 2B. Directors who do not contribute capital in support of the project must also submit Schedule 2C.

VIII. Limited Liability Company Members

Does the applicant have any members which are also LLCs?

Yes No

If yes:

A. In the following table, identify each LLC 2nd level member :

2 nd Level Member	Address
MVEC Holdings, LLC	110 Business Park Drive Utica, NY

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2 nd Level Member	Address

B. For each LLC-member, attach the following documentation:

- 1 A list providing the name, membership interest and percentage ownership interest in the 2nd Level Member and indirect ownership percentage in the Article 28 LLC. (Indirect ownership is determined by multiplying the percentage of ownership in each entity. For example, if A owns 10 percent of a 2nd Level Member which itself owns 80 percent of an Article 28 LLC, A owns an indirect ownership interest of eight percent in the Article 28 LLC.)

N.B.: All members of the 2nd Level Member must be natural persons.

- 2 A list of all managers;
- 3 Articles of Organization; and
- 4 Operating Agreement.

C. In addition to any other provisions required by the Limited Liability Company Law, the Articles of Organization of the 2nd Level Member must include provisions to the following effect:

- 1 That all members must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health;
- 2 That transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

D. The Operating Agreement of the 2nd Level Member must include provisions to the following effect:

- 1 That all members must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health,
- 2 That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of membership interests or voting rights

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must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health; and

- 3 That, if the 2nd Level Member will be managed by managers who are not members, that the following powers with respect to the ownership and operation of the Article 28 LLC are reserved to the members of the 2nd Level Member:
- (i) direct independent authority over the appointment or dismissal of hospital management-level employees and medical staff;
 - (ii) approval of hospital operating and capital budgets and independent control of the books and records;
 - (iii) adoption or approval of hospital operating policies and procedures and independent adoption of policies affecting the delivery of health care services;
 - (iv) authority over the disposition of assets and authority to incur liabilities not normally associated with day-today operations;
 - (v) approval of certificate of need applications filed by or on behalf of the hospital;
 - (vi) (approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
 - (vii) approval of hospital contracts for management or for clinical services; and
 - (viii) approval of settlements of administrative proceedings or litigation to which the hospital is a party; and that this provision may not be deleted; modified or amended without the prior approval of the Department of Health.

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SCHEDULE 14B CHECKLIST OF ATTACHMENTS

DOCUMENT	NA	Attached	Attachment number	Electronic Document file name
Management Agreement	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Sample membership certificate	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Business Corporation- Members				
Members	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of stockholders	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of officers and directors	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Certificate of Incorporation	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Not-for-Profit Corporation- Members				
Members	<input type="checkbox"/>	<input checked="" type="checkbox"/>	B	
List of members	<input type="checkbox"/>	<input checked="" type="checkbox"/>	B	
List of officers and directors	<input type="checkbox"/>	<input checked="" type="checkbox"/>	B	
Certificate of Incorporation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	B	
Bylaws	<input type="checkbox"/>	<input checked="" type="checkbox"/>	B	
Documentation of approval for the application	<input type="checkbox"/>	<input checked="" type="checkbox"/>	B	
Limited Liability Company - Members				
Members	<input type="checkbox"/>	<input checked="" type="checkbox"/>	C	
List of members	<input type="checkbox"/>	<input checked="" type="checkbox"/>	C	
List of managers	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Articles of Organization	<input type="checkbox"/>	<input checked="" type="checkbox"/>	C	
Operating Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	C	
General or Registered Limited Liability Company - Members				
List of Partners	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Partnership Agreement	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

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3. Bylaws.

III. Reserved Powers

A. Are or will any of the following powers be reserved to any of the applicant's member(s):

Appointment or dismissal of hospital management-level employees and medical staff, except the election or removal of corporate officers.

Yes No

Member:

Approval of hospital operating and capital budgets.

Yes No

Member:

Adoption or approval of hospital operating policies and procedures.

Yes No

Member:

Approval of certificate of need applications filed by or on behalf of the hospital.

Yes No

Member:

If yes, attach documentation of approval for this application.

Approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law.

Yes No

Member:

Approval of hospital contracts for management or for clinical services.

Yes No

Member:

Approval of settlements of administrative proceedings or litigation to which the hospital is a party, except approval of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

Yes No

Member:

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N.B.: If any of the applicant's members have been or will be delegated any of these powers, the member itself must have or obtain establishment approval. If so, submit Schedule 2a for each individual listed in item B(1) above. Directors who contribute capital to the project must also submit Schedule 2b. Directors who do not contribute capital to the project must also submit Schedule 2c.

B. Do any of the applicant's members reserve the power to approve certificate of need applications to ensure that they conform to the facility's stated mission and philosophy?

Yes No

Member:

If yes, attach documentation of approval for this application.

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Schedule 14C

SCHEDULE 14C CHECKLIST OF ATTACHMENTS

DOCUMENT	NA	Atta- ched	Attach- ment number	Electronic Document file name
Members	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of officers and directors	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Certificate of Incorporation	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Bylaws	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

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Schedule 14D

Schedule 14D Additional Legal Information - Article 28 General or Registered Limited Liability Partnerships

Instructions:

1. The language in Section A of this schedule must be included in the Partnership Agreements for Article 28 applicants seeking establishment or combined establishment and approval that are partnerships.
2. The language in section B of this schedule must be included in the Certificate of Registration for Article 28 applicants seeking establishment or combined establishment and construction approval that are registered limited liability partnerships.

N.B.: Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.

- A. Partnership Agreement – The language in section 600.1(5)(ii) of 10NYCRR must be included in its entirety for general or registered limited liability partnerships.
- B. Certificate of Registration – must include provisions to the following effect::
 1. That the powers and purposes specifically include the ownership and operation of the facility and the name of the facility; and
 2. That, notwithstanding anything to the contrary in the Certificate of Partnership agreement, transfers, assignments or other dispositions of partnership interests or voting rights must be effectuated in accordance with section 2801-4(b) of the PHL.

SCHEDULE 14D CHECKLIST OF ATTACHMENTS

DOCUMENT	NA	Attached	Attachment number	Electronic Document file name
Certificate of Registration	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

Schedule 17 A - Diagnostic and Treatment Center Program Information.

See "Schedules Required for Each Type of CON" to determine when this form is required.

Instructions: In the space below, briefly indicate how the facility intends to comply with state and federal regulations. If the application involves conversion of an existing practice, state who owns the practice and how the conversion will be done. If there are other entities utilizing the same space or resources, please state exactly how the space and resources will be allocated. Also, provide a description of the other entities.

The proposed Mohawk Valley EC, LLC intends to comply with State and federal regulations. It will seek to become an approved Medicare provider as soon as possible following approval and will thus be familiar with federal regulations. Its policies and procedures will be consistent with all New York State requirements for operations of an ambulatory surgery center licensed under Article 28 of the Public Health Law. The administrator and Medical Director will be responsible for assuring that the facility is in compliance with State and federal regulations.

Schedule 17 B - Community Need

See "Schedules Required for Each Type of CON" to determine when this form is required.

Public Need Summary:

Briefly summarize on this schedule, why the project is needed. Use additional paper, as necessary. If the following items have been addressed in the project narrative, please cite the relevant section and pages.

1. Identify the relevant service area (e.g., Minor Civil Division(s), Census Tract(s), street boundaries, Zip Code(s), Health Professional Shortage Area (HPSA) etc.)

SEE ATTACHED

2. Provide a quantitative and qualitative description of the population to be served. (Qualitative data may include median income, ethnicity, payor mix, etc.)

3. Document the current and projected demand for the proposed services. If the proposed services are covered by a DOH need methodology, demonstrate how the proposed service is consistent with it.

4. (a) Describe how this project responds to and reflects the needs of the residents in the community you propose to serve.

(b) Describe how this project is consistent with your facility's Community Service Implementation Plan (voluntary not-for-profit hospitals) or strategic plan (other providers).

5. Describe where and how the population to be served currently receives the proposed services.

Quality and Accreditation:

1. Please cite relevant accreditations, certifications or awards attained by the applicant which build confidence in services of high quality. Examples include certification as a Federally Qualified Neighborhood Health Center.

2. Describe relevant programs or resources the applicant will bring to the new facility. Include existing programs that have proven track records at the applicant's other sites, if applicable, as well as programs the applicant plans for the future. Such programs include:
 - a. Programs specially tailored to the health needs of the population of the service area.
 - b. Grant funded programs.
 - c. Scholarships or fellowships.

3. Describe the applicant's experience or track record serving similar populations:

**Primary and Specialty Care Services Review Criteria:
Expansion of Services**

When a CON application proposes conversion of a group or solo medical practice to Article 28 status, the applicant must provide a written analysis of the effect of the proposal on the following factors:

1. The full time equivalent (FTE) number of primary care physicians and specialists, by specialty, engaged in the practice after the conversion compared with the number before conversion.

2. The (FTE) number of non-physician providers of primary care and specialty care, by specialty, such as Physician Assistants, Certified Nurse Practitioners, Physical Therapists, and Dental Assistants after the conversion compared with the number before conversion.

3. The number of primary care and specialty visits, by specialty, after the conversion compared with the number before conversion.

4. The array of services to underserved clients after the conversion compared with the number before conversion.

Target Population and Service Area:

All applications involving primary care services must provide a written analysis that clearly demonstrates that the proposal meets at least one of the following criteria. For criteria that do not apply, enter "not applicable":

1. The proposed clinic is in an underserved area as indicated by location in a Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA).

2. The population to be served exhibits poor health status, as measured by factors such as high levels of inpatient discharges for ambulatory care sensitive conditions (ACSC), incidences of diseases and conditions in excess of standards in Healthy People 2010 or other pertinent indicators.

3. The primary care services of the proposed clinic will be targeted to a group or population with special needs or conditions that make it difficult for them to obtain adequate primary care in clinics or physician practices serving the general population. Examples of such needs and conditions are:
- Developmental disabilities.
 - HIV.
 - Alcohol Substance Abuse.
 - Health needs relating to aging.
 - Mental Health needs.
 - Homelessness
 - Linguistic or cultural barriers in obtaining access to primary care.

Capacity of Existing Primary Care Providers

The project narrative should describe existing primary care services in the proposed service area. The narrative should include the number and location of existing D&TCs, extension clinics and part-time clinics and a summary of primary care services available through private practices. The narrative should indicate whether travel time and transportation are factors in access to primary care. Examples of travel related issues include topography, seasonal weather conditions, and availability of public transportation. Applicants are not expected to describe the volume of services delivered by existing providers, since they will rarely have access to such data, but the project narrative should indicate that the applicant is reasonably familiar with the overall availability of primary care in the targeted area.

In instances where the target area is likely to already have significant primary care resources, the CON proposal will be reviewed for the following need related factors:

- The ratio of primary care physicians to population in the proposed service area. HPSA uses a ratio of 1.0 FTE physicians to 3000 persons; Medicaid Managed Care uses a ratio of 1 to 1500.
- The number of primary care physicians in the proposed service area who are "active" in serving the Medicaid population. This is often measured as physicians who are reimbursed \$5000 or more per year by Medicaid.
- The annual number of primary care visits per person by Medicaid eligible persons in the proposed service area. An average lower than 2.0 visits per person is often considered a problem.
- The percentage of the Medicaid population that is enrolled in Managed care will be taken into account where appropriate.
- The current volume of primary care visits to existing D&TC and Extension clinics.

Not all of the above criteria need be evaluated for all applications. The number will vary depending on the type and location of services proposed and on how thoroughly the application addresses need in the project narrative and the related schedules.

Need Review for Specialty Clinics:

Applications not involving primary care services must also provide a written analysis that clearly demonstrates that the need exists for the proposed services

4. Is the proposed clinic in an underserved area as indicated by location in a Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA)?

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Schedule 17B

5. Describe in very specific terms the patients who require the specialty services, including the number of patients and their specific health problems, and how the proposed facility will meet their needs better than existing providers.

6. In the case of Dental clinics, is the application supported by the local Health Department? Is the proposal supported by the Department of Health's Bureau of Dental Services? Is the applicant participating in current dental health initiatives? Has the applicant consulted with resources such as the New York State Oral Health Technical Assistance Center?

DDM CON Schedule 17B
 SCHEDULE 17 B - COMMUNITY NEED

Public Need Summary

Briefly summarize on this schedule, why the project is needed. Use additional paper, as necessary. If the following items have been addressed in the project narrative, please cite the relevant section and pages.

1. Identify the relevant service are (e.g., Minor Civil Division(s), Cenus Tract(s), street boundaries, Zip Code(s), Health Professional Shortage Are (HPSA) etc.)

The proposed Mohawk Valley Endoscopy Center's service area will consist primarily of the three counties where current patients of the gastroenterology practice of the sponsoring physicians currently reside. The majority of patients (70-75 percent) are likely to reside in Oneida County; 10-15 percent in Herkimer County; 5 percent in Madison County; and 5-10 percent from nearby counties including Lewis and Chenango.

2. Provide a quantitative and qualitative description of the population to be served. (Qualitative data may include median income, ethnicity, payor mix, etc.)

The population for the three counties which will comprise the majority of the patients to be served by the proposed Mohawk Valley Endoscopy Center totaled 369,937 according to the 2000 Census. Oneida County accounted for the majority of these residents (235,469) followed by Madison (69,441) and Herkimer (64,427). The White population comprised 92.6 percent of the population of the three counties with 4 percent Black/African American and 3.4 percent Other. The population is 50.4 percent female and 49.6 percent male. The population age is 65+ in 2010 is projected to total 55,765 (15.3 percent of the three county population) and is projected to be 60,457 in 2020, an increase of 8.4 percent.¹ It is anticipated that the payor mix for the proposed ambulatory surgery center will be similar to that of the current gastroenterology medical practice of the sponsoring physicians which is presented below:

Projected Payor Mix Mohawk Valley Endoscopy Center (Percent)	
Commercial/Managed Care	65
Medicare	25
Commercial/Fee-for-Service	2
Medicaid Managed Care	4
Medicaid/Fee-for-Service	2
Self-Pay/Charity Care	2
Total	100

¹ Cornell University Program on Applied Demographics New York State and County Population Projections by Age and Sex – Preliminary Population Projections by Age and Sex, New York State and 62 Counties, 2005-2035.

3. Document the current and projected demand for the proposed services. If the proposed services are covered by a DOH need methodology, demonstrate how the proposed service is consistent with it.

The seven gastroenterologists at Digestive Disease Medicine ("DDM") performed 19,173 outpatient endoscopy procedures in 2008 at St. Elizabeth Medical Center, Faxton-St. Luke's Healthcare –Faxton Division, Faxton-St. Lukes Healthcare-St. Lukes Division and Oneida Healthcare Center. The practice has been unable to fully meet the demand for endoscopy procedures by its current patient base. At the current time, there is a 10-14 week wait for an endoscopy procedure with approximately 500 patients waiting each week. This results in a pent-up demand for procedures totaling 5,000-7,000 procedures. The backlog is likely to continue to increase as the population of the three county area continues to age and more people practice preventative medicine. In order to meet the current and future demand for endoscopy services, the physician practice must increase the number of gastroenterologists in the practice. Although the practice has been actively recruiting additional gastroenterologists in recent years, it has been unsuccessful due to the shortage of the specialists along with the limited desirability of residing in Central New York. At least two new physicians will be needed to meet the additional demand when the proposed endoscopy center begins operation and at least one additional physician will be required by its third year of operation. It is anticipated that 6,000 additional endoscopy procedures would be performed during the initial year of the proposed Center's operation. The increase in procedures is attributable to a number of factors including an aging population, the availability of payment for these procedures by Medicare and many other insurers, and the increased emphasis on measures designed to indentify and treat health care conditions at the earliest possible stage. The DDM physicians will continue to practice at the four hospitals where they currently perform procedures and the complementary capacity of the proposed Center will not adversely impact the number of procedures currently performed in the hospitals.

4. (a) Describe how this project responds to and reflects the needs of the residents in the community you propose to serve.

The population currently receives endoscopy services at St. Elizabeth Medical Center, Faxton-St. Luke's Healthcare –Faxton Division, Faxton-St. Lukes Healthcare-St. Lukes Division and Oneida Healthcare Center. As indicated previously in #3, there is a 10-14 week wait for endoscopy procedures by patients at Digestive Disease Medicine.

The expanded capacity to perform endoscopy procedures will benefit community residents by reducing waiting times for procedures. In addition, freestanding endoscopy centers have proven to provide quality, cost-effective services in a facility which is patient-friendly and less intimidating than hospitals. Managed care plans have expressed interest in the cost-effective provision of endoscopy services in a freestanding facility. The creation of facilities which can meet market demands for cost-effective health care services is imperative to the long-term viability of the health care system.

Through expansion of capacity by both establishment of the proposed Endoscopy Center and recruitment of additional gastroenterologists, outreach activities can be initiated in both

the three county primary service area as well as in surrounding underserved counties in an effort to serve additional patients who would benefit from endoscopy procedures.

The proposed Center will serve all patients in need of its services regardless of income, race, sex, age or ability to pay. It is committed to creating a program that facilitates access to all populations and will establish a sliding fee scale for patients in need of services who are uninsured and lack the ability to pay full fees.

4. (b) Describe how this project is consistent with your facility's Community Service Implementation Plan (voluntary not-for-profit hospitals) or strategic plan (other providers)

Freestanding ambulatory surgery provides cost-effective, high quality health care with a high level of personal attention to better serve community needs. Independent facilities have been shown to be significantly different from hospital-based centers. Because of their smaller size and limited function, freestanding units enable the delivery of better service at lower cost, return control of the patient to the physician and effectively bridge the gap between the capabilities of the physician's office and those of the hospital. Freestanding centers have been shown to be less costly than hospital-based centers while providing greater levels of physician and patient satisfaction. As managed care plans seek to decrease health care expenditures, low-cost alternatives are required. Establishment of the proposed Endoscopy Center will ensure that a cost-effective site for endoscopy services is readily accessible to the service area's population.

5. Describe where and how the population to be served currently receives the proposed services.

As indicated in #3 previously, in 2008 the seven physicians at Digestive Disease Medicine performed 19,173 outpatient endoscopy procedures at four hospital facilities. However, as described in that same section, there was a pent-up demand for an additional 5,000-7,000 procedures.

In order to meet that demand and to meet additional needs in the three county primary service area as well as contiguous counties, two events must occur. First, capacity must be expanded to perform endoscopy services through establishment of the proposed Endoscopy Center. This in turn, will allow Digestive Disease Medicine to recruit additional gastroenterologists who can assist in meeting the demand for endoscopy procedures.

QUALITY AND ACCREDITATION

1. Please cite relevant accreditations, certifications or awards attained by the applicant which build confidence in services of high quality.

NA

2. Describe relevant programs or resources the applicant will bring to the new facility. Include existing programs that have proven track records at the applicant's other sites, if applicable, as well as programs the applicant plans for the future. Such programs include:

- a. Programs specially tailored to the health needs of the population of the service**
- b. Grant funded programs.**
- c. Scholarships or fellowships.**

NA

3. Describe the applicant's experience or track record serving similar populations:

As described previously, the seven physician owners of the proposed Endoscopy Center have been providing gastroenterology services to residents of Oneida, Herkimer and Madison and surrounding counties for 20 years. In 2008, they performed 19,173 outpatient endoscopy procedures at four hospital facilities.

Impact of Proposed CON on Diagnostic & Treatment Center Operating Certificate

TABLE 17C-1 AUTHORIZED SERVICES

Instructions:
For applications requesting changes to more than one location, complete a separate Table 17-C-1 for each location
For Chronic Dialysis Services only, enter only location below and proceed to page 2
Column c: Mark "x" in the box only if the service currently appears on the operating certificate (OpCert) not including requested changes
Column d: Mark "x" in the box this CON application seeks to add. **Column e:** Mark "x" in the box this CON application seeks to decertify.
Column f: Mark "x" in the box corresponding to all the services that will ultimately appear on the OpCert.

LOCATION: <i>(Enter street address of facility)</i>	<input type="checkbox"/> MOBILE CLINIC DESIGNATION (217) * Check box only if extension clinic is mobile <i>(A mobile clinic must be an extension clinic with a fixed main site)</i>
---	--

	b	c	d	e	f
		Existing	Add	Remove	Proposed
ABORTION	201	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ADULT DAY HEALTH	58	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ADULT DAY HEALTH - AIDS	172	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AMBULATORY SURGERY**					
MULTI-SPECIALTY**	204	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SINGLE-SPECIALTY** (UNDESIGNATED SPECIALTY)	205	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GASTROENTEROLOGY**	202	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OPHTHAMOLOGY**	195	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ORTHOPEDICS**	203	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AUDIOLOGY O/P(See Section 700.2)	159	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BIRTHING SERVICE O/P	180	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CERTIFIED MENTAL HEALTH SERVICES O/P***	53	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHEMICAL DEPENDENCE-REHABILITATION O/P	150	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLINIC OMRDD ARTICLE 16 SERVICES	218	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLINIC PART TIME SERVICES****	18	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLINICAL LABORATORY SERVICES O/P	018	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CT SCANNER	400	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DENTAL O/P	145	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FAMILY PLANNING O/P	148	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HEALTH FAIRS O/P	197	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HYPERBARIC CHAMBER	401	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LINEAR ACCELERATOR	402	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LITHOTRIpsy O/P	223	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MAGNETIC RESONANCE IMAGING (MRI)	403	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MEDICAL SOCIAL SERVICES O/P	50	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
METHADONE MAINTENANCE O/P	149	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MULTIPHASIC SCREENING FACILITY	305	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MULTIPHASIC SCREENING O/P	188	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NUCLEAR MEDICINE – DIAGNOSTIC O/P	224	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NUCLEAR MEDICINE – THERAPEUTIC O/P	225	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- * MOBILE CLINIC: For each location a clinic vehicle will parks to provide services, a separate "Mobil Clinic Site Approval Request" must be attached. A blank form is included below.
- ** AMBULATORY SURGERY requires additional approval by Medicare
- *** MENTAL HEALTH requires additional approval by Office of Mental Health
- **** PART-TIME CLINICS: For each site, enclose a completed copy of form DOH-4-197 (9/00), which is available from: Project Management Group, Division of Health Facility Planning, Office of Health Systems Management, New York State Department of Health, 433 River Street, 6th floor, Troy, NY 12180

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TABLE 17C-1 AUTHORIZED SERVICES (cont.)

a	b	c	d	e	f
		Existing	Add	Remove	Proposed
NUTRITIONAL O/P	185	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OPHTHAMOLOGY O/P	227	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OPTOMETRY O/P	228	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OUTPATIENT SURGERY	68	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PEDIATRICS O/P	152	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PET SCANNER	404	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PHARMACEUTICAL SERVICES	073	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PHYSICAL MEDICINE AND REHABILITATION O/P	160	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PODIATRY O/P	177	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PRENATAL O/P	081	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PRIMARY MEDICAL CARE O/P	071	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PSYCHOLOGY O/P	085	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RADIOLOGY - DIAGNOSTIC	184	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RADIOLOGY - THERAPEUTIC	230	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RENAL DIALYSIS – HOME TRAINING O/P	37	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
THERAPY - OCCUPATIONAL O/P	146	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
THERAPY - PHYSICAL O/P	147	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
THERAPY - RESPIRATORY O/P	231	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
THERAPY - SPEECH LANGUAGE PATHOLOGY	155	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
THERAPY - VOCATIONAL REHABILITATION	107	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TRANSFUSION SERVICES - FULL	102	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TRANSFUSION SERVICES - LIMITED	189	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
WELL-CHILD	186	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

END STAGE RENAL DISEASE (ESRD)

TABLE 17C-1(a) CAPACITY	Existing	Add	Remove	Proposed
CHRONIC DIALYSIS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If application involves dialysis service with existing capacity, complete the following table:

TABLE 17C-1(b) PROCEDURES	Last 12 mos	2 years prior	3 years prior
CHRONIC DIALYSIS			

All Chronic Dialysis applicants must provide information requested on the following page in compliance with 10 NYCRR 670.6.

END STAGE RENAL DISEASE (cont.)

1. Provide a five-year analysis of projected costs and revenues that demonstrates that the proposed dialysis services will be utilized sufficiently to be financially feasible.

2. Provide evidence that the proposed dialysis services will enhance access to dialysis by patients, including members of medically underserved groups which have traditionally experienced difficulties obtaining access to health care, such as; racial and ethnic minorities, women, disabled persons , and residents of remote rural areas.

3. Provide evidence that the hours of operation and admission policy of the facility will promote the availability of dialysis at times preferred by the patients, particularly to enable patients to continue employment.

4. Provide evidence that the facility is willing to and capable of safely serving patients.

5. Provide evidence that the proposed facility will not jeopardize the quality of care or the financial viability of existing dialysis facilities. This evidence should be derived from analysis of factors including, but not necessarily limited to current and projected referral and use patterns of both the proposed facility and existing facilities. A finding that the proposed facility will jeopardize the financial viability of one or more existing facilities will not of itself require a recommendation to of disapproval.

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Table 17C-2 - Projected Utilization of Services:

The number of projected "visits" should be listed in this table for each existing or proposed certified service. Visits should be estimated for the current, first and third year of the project.

Service Classification Code	Description	Current Year Visits	1st Full Year of Project (2011/12)	3rd Full Year of Project (2013/14)
068	Ambulatory Surgery Visits	Not Applicable	6,000	7,260
Total Visits			0	6,000

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Schedule 17D

Table 17D-1 D&TC Allocation of Operating Costs

Year 1 from 8/2011 to 7/2012

a	b	c	d	e	f	g	h	i	j	k
		Salary & Wages	Employee Benefits	Purchased Services	Supplies	General Costs	Donations	Total Before Distrib	Distrib of Facility Costs	Total after Distribution
328	TOTAL ADJUSTED COSTS	\$ 925,000	\$ 231,250	\$ 24,000	\$ 212,000	\$ 989,729		\$ 2,381,979		\$ 2,381,979
	I. Core Cost Centers									
329	a. Administration	\$ 325,000	\$ 81,250	\$ 24,000	\$ 20,000	\$ 144,483		\$ 594,733	167,974	\$ 762,707
330	b. Facility	\$ -	\$ -			\$ 510,498		\$ 510,498	\$ (510,498)	
331	c. Patient Transportation							\$ -		
332	Subtotal	\$ 325,000	\$ 81,250	\$ 24,000	\$ 20,000	\$ 654,981	\$ -	\$ 1,105,231	\$ (342,524)	\$ 762,707
	II. Patient Care Cost Centers									
	a. Multi-service, child health									
342	1. Medical									
343	2. Dental									
344	3. Laboratory									
345	4. X-ray									
346	5. Pharmacy									
	6. Mental Health									
347	7. Rehab Therapies									
348	8. Other Health	\$ 600,000	\$ 150,000		\$ 192,000	\$ 270,748		\$ 1,212,748	\$ 342,524	\$ 1,555,271
349	SUBTOTAL a	\$ 600,000	\$ 150,000	\$ -	\$ 192,000	\$ 270,748	\$ -	\$ 1,212,748	\$ 342,524	\$ 1,555,271

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Schedule 17D

Table 17D-1 D&TC Allocation of Operating Costs

Year 3 from 8/2013 to 7/2014

a	b	c	d	e	f	g	h	i	j	k
		Salary & Wages	Employee Benefits	Purchased Services	Supplies	General Costs	Donations	Total Before Distrib	Distrib of Facility Costs	Total after Distribution
328	TOTAL ADJUSTED COS	\$ 1,053,014	\$ 263,254	\$ 27,467	\$ 254,629	\$ 1,033,780		\$ 2,632,144		\$ 2,632,144
	I. Core Cost Centers									
329	a. Administration	\$ 348,148	\$ 87,037	\$ 27,467	\$ 21,425	\$ 146,419		\$ 630,497	174,784	\$ 805,281
330	b. Facility	\$ -	\$ -			\$ 557,410		\$ 557,410	\$(557,410)	
331	c. Patient Transportation							\$ -		
332	Subtotal	\$ 348,148	\$ 87,037	\$ 27,467	\$ 21,425	\$ 703,829	\$ -	\$ 1,187,906	\$(382,625)	\$ 805,281
	II. Patient Care Cost Centers									
	a. Multi-service, child health									
342	1. Medical									
343	2. Dental									
344	3. Laboratory									
345	4. X-ray									
346	5. Pharmacy									
	6. Mental Health									
347	7. Rehab Therapies									
348	8. Other Health	\$ 704,866	\$ 176,217		\$ 233,204	\$ 265,951		\$ 1,380,238	\$ 382,625	\$ 1,762,863
349	SUBTOTAL a	\$ 704,866	\$ 176,217	\$ -	\$ 233,204	\$ 265,951	\$ -	\$ 1,380,238	\$ 382,625	\$ 1,762,863

**New York State Department of Health
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Schedule 17E

Schedule 17 E - D&TC Statement of Revenue:

This schedule consists of the Detailed Monthly Cash Flow Analysis for the first year of operations (to be submitted as an attachment) and analysis of:

- Patient Revenue
- Other Operating Revenue
- Non-Operating Revenue
- Charges

Please see Attachment #16 for Monthly Cash Flow Analysis for First Year

Provide a breakdown of the utilization (threshold visits) by payer source. Provide supporting calculations for the rates assumed for each payer.

Please see Attachment #17 for Utilization by Payor

I. Patient Revenue	Commercial	Fee for Service	\$84,000
		Managed Care	\$2,531,100
	Medicare	Fee for Service	\$538,362
		Managed Care	
	Medicaid	Fee for Service	\$66,757
		Managed Care	\$131,280
	Private Pay		\$4,800
	OASAS		
	OMH		
	Charity Care		\$21,534
Bad Debt			
Ordered Ambulatory Services			
	TOTAL		\$3,377,834
II. Other Operating Revenue	Sale of Literature		
	Sale of Supplies to Other than Patients		
	Telephone		
	Other		
	TOTAL		
III. Non-Operating Revenue	Gifts, Legacies, and Bequests		
	Grants		
	Other Non-Operating Revenue		
	NYS Bad Debt Charity Care Pool Distrib.		
	TOTAL		
IV. Total Revenue (I, II, and III)			\$3,377,834

LIST OF ATTACHMENTS

1. Certificate of Assumed Name
 2. Lease Agreement
 3. Anti-Kickback Statement
 4. Organizational Chart
 5. Articles of Organization
 6. Operating Agreement
 7. Bank Letter of Interest
 8. Pro Forma Balance Sheet (Schedule 5)
 9. Equipment Leases
 10. Realtor Letters
 11. Sources of Cash
 12. Medical Director's Curriculum Vitae (Schedule 13B)
 13. Transfer and Affiliation Agreements
 14. Procedure Expectations (Schedule 2)
 15. Rent, Depreciation and Interest Expense (Schedule 13C)
 16. Monthly Cash Flow Analysis for First Year (Schedule 17)
 17. Utilization by Payor (Schedule 17)
- A. Architectural Submission (**This section has not changed from the original CON submission**)
- Functional Space
 - Narrative
 - Floor Plan (previously submitted)
 - Certification Letter
 - Building Total Square Footage

LIST OF ATTACHMENTS CONTINUED (PAGE 2 OF 2)

B. Not-For-Profit Member Attachments (Schedule 14)

St. Elizabeth Medical Center

- List of Members
- List of Board of Trustees
- Certificate of Incorporation
- Bylaws
- Board Resolution

Faxton St. Luke's Healthcare

- List of Members
- List of Board of Trustees
- Certificate of Incorporation
- Bylaws
- Board Resolution

C. Limited Liability Company Member Attachments (Schedule 14)

Mohawk Valley EC, LLC

- List of Members
- Articles of Organization
- Operating Agreement

D. Schedule 2A, 2B and 2C as applicable for all members

Certificate of Assumed Name
Pursuant to General Business Law, §130

1. NAME OF ENTITY

MOHAWK VALLEY EC, LLC

1a. FOREIGN ENTITIES ONLY. If applicable, the fictitious name the entity agreed to use in New York State is:

2. NEW YORK LAW FORMED OR AUTHORIZED UNDER (CHECK ONE):

- Business Corporation Law Limited Liability Company Law
 Education Law Not-for-Profit Corporation Law
 Insurance Law Revised Limited Partnership Act

Other (specify law):

3. ASSUMED NAME

MOHAWK VALLEY ENDOSCOPY CENTER

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST BE NUMBER AND STREET. IF NONE, INSERT OUT-OF-STATE ADDRESS)

116 Business Park Drive
Utica, New York 13502

5. COUNTIES IN WHICH BUSINESS WILL BE CONDUCTED UNDER ASSUMED NAME

ALL COUNTIES (if not, circle county[ies] below)

Albany	Clinton	Genesee	Monroe	Orleans	Saratoga	Tompkins
Allegany	Columbia	Greene	Montgomery	Oswego	Schenectady	Ulster
Bronx	Cortland	Hamilton	Nassau	Otsego	Schoharie	Warren
Broome	Delaware	Herkimer	New York	Putnam	Schuyler	Washington
Cattaraugus	Dutchess	Jefferson	Niagara	Queens	Seneca	Wayne
Cayuga	Erie	Kings	Oneida	Rensselaer	Steuben	Westchester
Chautauqua	Essex	Lewis	Onondaga	Richmond	Suffolk	Wyoming
Chemung	Franklin	Livingston	Ontario	Rockland	Sullivan	Yates
Chenango	Fulton	Madison	Orange	St. Lawrence	Tioga	

6. INSERT THE ADDRESS OF EACH LOCATION WHERE BUSINESS WILL BE CARRIED ON OR TRANSACTED UNDER THE ASSUMED NAME.

Use a continuous sheet, if needed. (The address must be set forth in terms of a number and street, city, state and zip code. Please note that the address(es) reflected in paragraph 6 must be within the county(ies) circled in paragraph 5. If the entity does not have a specific location where it will conduct business under the assumed name please check the statement below.)

116 Business Park Drive
Utica, New York 13502

No New York State Business Location

LEASE AGREEMENT

THIS LEASE is entered into as of this 15th day of October between 116 BUSINESS PARK ASSOCIATES, LLC ("Landlord"), with an address at 110 Business Park Drive, Utica, New York 13502 and MOHAWK VALLEY EC, LLC ("Tenant"), with an address at 110 Business Park Drive, Utica, New York 13502.

1. Premises. Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the premises constituting approximately 11,436 square feet located on the second floor of the building located at 116 Business Park Drive, Utica, New York (the "Building") as shown on the Floor Plan annexed to this Lease as Exhibit A (the "Premises"). As appurtenant to the Premises, Tenant shall have the right of non-exclusive use, in common with others of (a) all driveways, parking spaces and footways and of (b) such loading facilities, elevators and other common facilities as exist or as may be constructed and designated as common area in the Building, from time to time, by Landlord, all to be subject to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by Landlord.
2. Term and Option to Renew. The initial term of this Lease shall begin on the Term Commencement Date and shall expire 10 years following the Operations Commencement Date established under Section 3 (the "Initial Term"). So long as Tenant is not in default under this Lease Tenant shall have the option of renewing this Lease for two additional five year terms (each, a "Renewal Term") at the same terms and conditions as contained in this Lease, except that Base Rent during each Renewal Term shall increase as set forth in Section 6. Tenant shall give notice in writing, by certified mail or overnight delivery, to the Landlord of its intention to exercise such renewal option at least nine months prior to the expiration of the then-current term of the Lease. The Initial Term and any Renewal Terms are referred to as the "Lease Term" hereunder.
3. Lease Commencement Dates. The "Term Commencement Date" shall be January 1, 2011. The "Operations Commencement Date" shall be the first business day after the date upon which the Tenant receives an operating certificate from the Department of Health to operate its ambulatory surgery center on the Premises. Promptly following the Operations Commencement Date, Landlord and Tenant shall execute and deliver a Stipulation of Operations Commencement Date.
4. Use. The Premises shall be used for the operation of an ambulatory surgery center and related activities and for no other purpose without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned.
5. Construction of Surgery Center. Tenant shall, at its sole cost and expense (a) construct an ambulatory surgery center at the Premises pursuant to the plans and specifications provided by Tenant and approved by Landlord and (b) make modifications to the Building required to accommodate the construction and operation of an ambulatory surgery center at the Premises.

6. Rent. Beginning on the Term Commencement Date Tenant shall pay monthly rent as set forth below reduced, if applicable, by any rent by paid by MetLife if MetLife then occupies any portion of the Premises. All rent shall be paid in advance on the first day of each month, at the office of the Landlord or such other place as Landlord may designate, without set off or deduction whatsoever. Should Tenant fail to pay any installment of rent by the 30th day of the month, then Tenant, in addition to any other remedies available to Landlord hereunder, shall pay a late fee equal to 5% of the delinquent monthly installment.

<u>Rental Period</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
Initial Term	\$251,592	\$20,966
First Renewal Term	\$276,751	\$23,063
Second Renewal Term	\$304,426	\$25,369

7. Utilities. Tenant shall pay for all utility services rendered or furnished to the Premises, including water, heat, gas, electricity and power.
8. Increases in Real Estate Taxes. During the Lease Term, Tenant shall pay to Landlord as additional rent an amount equal to Tenant's Proportionate Share of the amount by which real estate taxes, assessments and all other governmental charges or levies of any kind, general and special, ordinary and extraordinary, foreseen and unforeseen which may be charged or imposed by any governmental authority on the real property and improvements, including the Building, for each calendar year ("Taxes") exceed Base Tax Amount. "Base Tax Amount" shall mean the full property assessment of the Building for the first lease year (taking into account all leasehold improvements made by Tenant) multiplied by the tax rate in such first lease year exclusive of any PILOT program or other tax abatement program. Within 10 days after Tenant's receipt of that statement (and on the first day of each month thereafter without notice or invoice) Tenant shall pay to Landlord an amount equal to 1/12 of Tenant's Proportionate Share of the increase in Base Tax Amount. A copy of a tax bill or assessment bill submitted by Landlord to Tenant shall be sufficient evidence of the amount of Taxes levied or assessed. For purposes of this Lease "Tenant's Proportionate Share" shall be 50%.
9. Increases in Operating Costs.
- a. Beginning on the first anniversary of the Operations Commencement Date, Tenant shall pay to Landlord, as additional rent, on the first day of each month, an amount equal to one-twelfth (1/12th) of Tenant's Proportionate Share of the estimated amount by which Operating Costs for each Computation Year exceed Base Operating Costs. "Computation Year" shall mean each 12-month period during the term of this Lease beginning on the Operations Commencement Date. "Base Operating Costs" shall mean the Operating Costs for the 12-month period beginning on the Operations Commencement Date.
 - b. Following the end of the Computation Year, Landlord shall furnish to Tenant a comparative statement showing Tenant's Proportionate Share of the increase in Operating Costs during the period over the Base Operating Costs and the amounts paid by Tenant (based on Landlord's estimate of increases in Operating Costs) attributable to such year. Any overpayment or underpayment by Tenant shall be promptly adjusted by payment within 15 days of the balance of any

underpayment for such year by Tenant to Landlord, or by Landlord to Tenant of the balance of any overpayment for such year.

- c. "Operating Costs" shall mean all costs incurred and expenditures of whatever nature made by Landlord (and not paid or reimbursed by Tenant) in the operation, maintenance and management of the Building, which, in accordance with accepted principles of sound accounting practice as applied to the operation and maintenance of first class office buildings are properly chargeable to the operation, maintenance and management of the Building. Operating Costs shall include, but not be limited to, the following: (a) the costs of operating and maintaining the Building and the Building's common areas, exterior parking and landscaped areas, including, but without limiting the generality of the foregoing, cost of janitorial and cleaning services, casualty and liability insurance, repairs, painting, refinishing, lighting, utilities, sanitary control and facilities, removal of waste and refuse, fire and security protection, heating, ventilating and air-conditioning, cost of all energy and water used in or at the Building, the maintenance and repair of lighting, utilities and heating, ventilating and air-conditioning systems and equipment, the cost, as reasonably amortized by Landlord, with annual interest at Landlord's cost of funds, of any capital improvements made to the Building, repair and/or replacement of water lines, sanitary and storm sewer lines, the cost of holiday and other decorations, and related costs to implement such services, plus (b) other expenses customarily incurred in connection with the operation and maintenance of a first-class office building.

10. Care and Maintenance of the Premises.

- a. Tenant shall, at its own expense and at all times maintain the Premises in good and safe condition, including any systems or equipment installed by Tenant upon the Premises and shall surrender the same, at termination hereof in as good condition as received, normal wear and tear excepted. Tenant shall be responsible for and shall maintain the equipment (heating, electrical, sanitary, air conditioning, humidification, sterilization, gas and other systems) related directly to the operation of the surgery center. Tenant also shall keep the Premises in a clean and sanitary condition; remove medical waste and dispose of trash in the area(s) designated by the Landlord, and contract for and pay for the cost of janitorial cleaning, cleaning supplies and paper products and soaps, used in the Premises.
- b. Landlord shall maintain the roof, external walls, building equipment (including heating, electrical, sanitary, air conditioning and other systems, but excluding equipment related directly to the operation of the surgery center which is the responsibility of Tenant pursuant to subsection (a) above) and other common facilities of the Building in good condition and repair.

11. Improvements. Tenant, shall not, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, make any alterations, additions or improvements, in, to, or about the Premises. Landlord at its option may, at the time Landlord grants its written approval to proposed improvements, require the removal of the improvements and the restoration and repair of the Premises to the condition existing prior to installation of the improvements at the expiration or earlier termination of this Lease.

Tenant agrees that any improvements and alterations made by it shall immediately become the property of Landlord and shall remain upon the Premises in the absence of a written agreement to the contrary. All alterations to the Premises will be at the Tenant's own cost and expense. Damage done to the Premises by the removal of such property shall be repaired at the expiration of the Lease Term at the Tenant's own cost and expense. Tenant shall have the right to remove movable trade fixtures. Tenant shall indemnify and hold harmless Landlord from all claims, losses, damages, liabilities, liens, and expenses (including reasonable attorneys' fees) incurred or suffered by Landlord in connection with Tenant making any alteration, addition or improvement to the Premises. Tenant shall not commence any construction work without first delivering to Landlord a policy or policies of workers' compensation insurance, comprehensive general liability and property damage insurance, naming Landlord as additional insureds for any and all contractors and sub-contractors working on the Premises. Landlord has consented to Tenant's plans and specifications with respect to the construction of the ambulatory surgery center and Tenant shall not be required to remove such improvements and restore the Premises to its original condition upon the expiration or termination of the Lease.

12. Compliance with Orders of Public Authorities. Tenant shall comply with all laws, ordinances, rules, regulations or requirements of all federal, state or municipal governments, and every department or bureau thereof applicable to the Premises, and shall not do or permit to be done any act upon the Premises whereby the hazard of fire or the rate of fire insurance upon the Premises may be increased over and above those acts associated with operating an endoscopic surgery center or which shall be in violation of the rules of the Board of Fire Underwriters or the provisions of the New York State standard form of fire insurance policies.
13. Subordination. This Lease is and shall be, without the necessity of further documentation, subject and subordinate to all ground or underlying leases and to the lien of all existing or future mortgages which may be a lien upon the Building or any part thereof or upon Landlord's interest in the Building, and to any renewal, replacement, extension, modification or refinancing thereof, provided that the holder of such lease or mortgage enters into an agreement in writing with Tenant in a form satisfactory to such Landlord or mortgagee wherein such Landlord or mortgagee agrees to recognize the Lease with Tenant and not disturb Tenant's possession of the Premises so long as Tenant is not in default. Tenant shall, at Landlord's request, promptly execute and deliver any further instrument or instruments further evidencing the subordination of this Lease to the lien of any mortgage or deed of trust, and if Tenant fails or refuses, Tenant hereby constitutes and appoints Landlord as Tenant's attorney-in-fact to execute and deliver any such instrument or instruments on behalf of Tenant.
14. Attornment. If any proceedings are commenced for the foreclosure of any mortgage encumbering the Premises, Tenant agrees, if requested to do so by the purchaser, to attorn to the purchaser at the foreclosure sale, and to recognize the purchaser as the Landlord under this Lease, and Tenant waives the provisions of any statute or rule of law which may give Tenant any right to terminate this Lease in the event any foreclosure proceeding is commenced and the Premises sold pursuant to that proceeding.
15. Assignment and Subletting. Tenant shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Landlord. Any such assignment or subletting without consent shall be void and, at the option of Landlord, may terminate this Lease.

16. Entry and Inspection. Tenant shall permit Landlord or Landlord's agents to enter upon the Premises at reasonable times and upon reasonable notice, (or, in the event of an emergency without notice) for the purpose of inspecting the same, and will permit Landlord at any time within 120 days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "To Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.
17. Liability of Landlord. Landlord shall not be liable to Tenant for any loss, damage or expenses of any kind resulting from, and no claim shall be made against Landlord by Tenant for: (a) any injury or damage to person or property occurring in, on or about the Premises; (b) the theft, loss or destruction of any personal property contained in the Premises or any storage rooms provided by Landlord, or of any automobile (or personal property contained in any automobile) parked in any parking areas designated by Landlord for parking; (c) the necessity of repairing the Premises or any other portion of the Building; (d) fire or other casualty; (e) any overflow or leakage upon or into the Premises of water, rain, snow, steam, gas or electricity, or any breakage or bursting of pipes, conduits or other plumbing fixtures or appliances; or (f) any loss or damage to property of the Tenant entrusted with Landlord's employees; provided, however, that the foregoing exculpatory provisions shall not apply to loss, damage or expense resulting from the willful or negligent act or omission of Landlord or its agents. All references to Tenant in the preceding sentence shall be deemed to include Tenant's employees, agents and other persons claiming the right to be in the premises or the Building under or through Tenant. It is specifically understood and agreed that there shall be no personal liability of Landlord in respect to any of the covenants, conditions or provisions of this Lease; in the event of a breach or default by Landlord of any of its obligations under this Lease, Tenant shall look solely to the equity of the Landlord in the Building for the satisfaction of Tenant's remedies.
18. Indemnification. Tenant shall indemnify and save harmless Landlord from any and all liability, damages, expenses, fees, penalties, actions, causes of action, suits, costs, claims or judgments in connection with loss of life, personal injury or damage to property (a) arising from or out of any occurrence in, upon or at the Premises; (b) arising from or out of the occupancy or use by Tenant of the Premises or any part thereof; (c) arising from any breach of any provision of this Lease, including the enforcement thereof by Landlord; or (d) occasioned wholly or in part by any act or omission of Tenant, its agents or employees.
19. Tenant Insurance
 - a. Liability Insurance. Tenant covenants and agrees, at its own cost and expense, to keep in full force and effect during the entire term of this Lease, a policy of general liability insurance with an insurance company qualified to do business in New York State which policy shall insure against claims for personal injury, death or property damage with such limits as may be reasonably requested by Landlord from time to time but not less than \$2,000,000 in case of bodily injury or death and in the sum of \$1,000,000 in case of property damage, naming Landlord as an additional named insured and containing an endorsement that the policy will not be cancelled or reduced in scope of coverage or amount of coverage until 30 days after written notice to Landlord. Tenant shall provide Landlord with a certificate of such insurance upon the execution of this Lease and upon each renewal of such insurance policy. Failure to deliver such certificates shall be considered a material breach of this Lease Agreement.

- b. Property Insurance. Tenant covenants and agrees, at its own cost and expense, to keep in full force and effect during the entire term of this Lease fire and extended coverage insurance with an insurance company qualified to do business in New York State, based upon full replacement cost of Tenant's personal property and fixtures. Such insurance shall contain an agreement by the insurance company that the policy or policies will not be cancelled or the coverage changed without 30 days prior written notice to Landlord. The Tenant shall provide Landlord with a certificate of such insurance upon the execution of this Lease and upon each renewal of such insurance policy. Failure to deliver such certificates shall be considered a material breach of this Lease Agreement.
20. Waiver of Subrogation. Landlord and Tenant hereby waive all rights of subrogation against each other with respect to loss by fire or other casualty, and any insurance policies kept and maintained by the parties, shall be so written as to recognize such waiver.
21. Parking. Shall be available for Tenant's use in common with the other tenants.
22. Condemnation.
- a. If the whole of the Premises is taken under power of eminent domain, or if sold to any entity having the power of eminent domain under threat of condemnation, this Lease shall terminate on the day on which the condemnor or buyer takes physical possession thereof. In the event of such a taking or sale of only a part of the Premises which shall, in Tenant's opinion, substantially impair Tenant's use or occupancy of the ambulatory surgery center, Tenant may terminate this Lease by giving Landlord written notice thereof not more than 10 days after the condemnor or buyer takes possession of the parts taken or sold.
- b. If a partial taking or sale does not substantially impair Tenant's use or occupancy of the ambulatory surgery center or if Tenant shall not terminate the lease as hereinafter provided, the Landlord shall, to the extent practicable, restore the remaining Premises to a complete architectural unit, anything else herein this lease regarding repair or replacement to the contrary notwithstanding. In the event of the partial taking or sale, the funds derived from said source shall be used for restoration and repair of the Premises; provided, however, that Landlord shall not be obligated to expend an amount in excess of the proceeds of the net funds derived from said source and available to Landlord for such purposes.
- c. Tenant shall not be entitled to any part of the award or sales price received for such taking or sale of all or any part of the Premises, except that part of the award of sales price which shall be specifically designated by the condemnor in the event of condemnation or by mutual agreement of the Landlord or Tenant in the event of a sale, for the ambulatory surgery center on the Premises which has been constructed by Tenant, multiplied by the fractional percentage of the lease term remaining at the time the award or sales price is received, and Tenant does hereby assign such award or sales price received for such taking or sale and will execute any assignments or other documents necessary to effect the transfer of such award or sales price to Landlord in accordance with such divisional allocation. The owner or holder of any first mortgage of record at the time of any such taking shall nevertheless have a first or prior claim against any award or

sales proceeds to the extent of the unpaid balance of its mortgage.

- d. During the term of this Lease, neither Tenant or Landlord shall, without the written consent of the other, make any voluntary settlement, or sale, with respect to the Premises, with any entity having the power of eminent domain, in connection with any condemnation proceeding or threat thereof.
 - e. If, following a partial taking and sale, Tenant does not terminate the Lease as here in before provided, the Rent shall be reduced proportionately.
23. Damage. In the event of damage to the Premises by fire or other casualty, Landlord shall cause such damage to be repaired, but if the Premises are so damaged that Landlord decides not to rebuild, the term of this Lease shall cease and the accrued rent shall be paid up to the time of the fire or other casualty. If the Premises are wholly or partially fit for occupancy by Tenant during the period of repairs, then the rent shall be apportioned based upon the part fit for occupancy. No claim shall be made by the Tenant in any case for compensation or damages by reason of interruption of its business through any such destruction or damage to the Premises or arising from the necessity of repairing any portion of the Premises as herein provided.
24. Default and Landlord's Rights.
- a. The following shall constitute an "Event of Default":
 - i. If the Premises shall be deserted or vacated for a period exceeding 30 days;
 - ii. If proceedings are commenced by the Tenant in any court under a bankruptcy or insolvency statute, or against the Tenant under such statute and not dismissed within 90 days after commencement;
 - iii. If proceedings are commenced for the appointment of a trustee or receiver of the Tenant's property;
 - iv. If there shall be a default in the payment of rent, additional rent, or other charge due from Tenant, or any part thereof, for more than 10 days after written notice from Landlord;
 - v. If there shall exist any unsatisfied judgment against Tenant in excess of \$50,000 for 30 days after written notice from Landlord to Tenant;
 - vi. If Tenant shall make an assignment for the benefit of Tenant's creditors;
 - vii. If the leasehold estate created by this Lease shall be taken by execution or other process of law; or
 - viii. If there shall be default in the performance of any other covenant, agreement or condition contained in this Lease by the Tenant for more than 30 days after written notice of default by the Landlord unless the default cannot be cured within the foregoing 30 day period and Tenant commences to cure the default within the 30 day period and diligently proceeds to cure the default

to completion within a reasonable time, but in no event later than six months after Tenant's receipt of the notice of default from Landlord.

- b. Subject to Section 25 below, upon an Event of Default, Landlord shall have the right to terminate this Lease by giving 10 days written notice to Tenant and upon the expiration of said 10 days this Lease shall expire as if that day were the date herein specifically fixed for the expiration of the term of this Lease. Landlord shall have the right, whether or not this Lease is terminated as provided above, to enter and repossess the Premises by summary proceeding, or otherwise, and to dispossess and remove therefrom any and all occupants and their effects without being liable to prosecution or damages therefor, and to hold the Premises as if this Lease had ceased by expiration through maturity of the term above specified.
 - c. In the event that Landlord is able to lease the Premises, but shall not realize a sufficient sum each month from any rents collected and received from said Premises after paying all the costs and expenses of any repairs, alterations or additions and the expenses of any reletting, including, without limitation brokerage fees and reasonable attorneys' fees, and the collection of rent accruing therefrom to satisfy the rental herein provided to be paid by Tenant, Tenant will satisfy and pay such deficiency each month upon demand, but shall be entitled to reimbursement for sums so paid out of any surplus later arising.
25. Right of Reentry. Notwithstanding the provisions of Section 24 hereof, Landlord acknowledges that its rights of reentry into the Premises do not confer on it the authority to operate a hospital as defined in Article 28 of the Public Health Law on the Premises and agrees that it will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, New York 12237 notification by certified mail of its intent to reenter the Premises or to initiate dispossess proceedings or that this Lease is due to expire, at least 30 days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before expiration of this Lease. Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossess proceedings and 60 days prior to the expiration of this Lease, Tenant shall immediately notify by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, New York 12237, of the receipt of such notice or service of such process or that this Lease is about to expire.
26. Quiet Enjoyment. Tenant, upon paying the rent and observing and performing all the terms, covenants and conditions contained in this Lease on Tenant's part to be observed and performed, shall peaceably and quietly enjoy the Premises without hindrance by Landlord.
27. Surrender of Premises. Tenant covenants, at the expiration or other termination of this Lease, to remove its property from the Premises and to leave the Premises in good repair, order and condition, ordinary wear and tear and damage by fire or other casualty excepted. All alterations, additions and fixtures other than Tenant's equipment, which have been made or installed by either Landlord or Tenant upon the Premises shall remain as Landlord's property and shall be surrendered with the Premises as a part thereof. If the Premises are not surrendered at the end of the Term or at the time of an early termination, Tenant shall indemnify Landlord against loss or liability resulting from Tenant's delay in surrendering the Premises, including, without limitation, claims made by any succeeding

tenant. Tenant shall promptly surrender all keys for the Premises to Landlord and shall inform Landlord of combinations on any locks and safes on the Premises.

28. Mechanics' Liens. If any mechanics' or other liens, or orders for payment of money shall be filed against the Premises by reason of or arising out of any labor or materials furnished or alleged to have been furnished, or to be furnished, to or for Tenant at the Premises, Tenant shall within 10 days after notice of filing thereof cause the same to be cancelled and discharged of record, by bond or otherwise at the expense of Tenant.
29. Landlord's Right to Perform Tenant's Obligations - Additional Rent. If Tenant shall fail to perform any of its obligations under this Lease, Landlord may, but shall not be obligated to, after five days' notice to Tenant, or without notice in case of an emergency, perform any of those obligations of Tenant. Any sums paid and all costs incurred by Landlord, including without limitation reasonable attorneys' fees, in the performance of Tenant's obligations under this Lease, together with interest thereon at the rate of 10% per year from the date Landlord incurs such costs, shall be additional rent and shall be paid by Tenant to Landlord on demand, and, if not timely paid by Tenant, Landlord shall have the same rights and remedies as the Landlord has for any other default under this Lease.
30. Waiver of Jury Trial. Landlord and Tenant covenant and agree that in any action, proceeding or counterclaim brought by either Landlord or Tenant against the other on any matter whatsoever arising out of, under or by virtue of the terms of this Lease or Tenant's occupancy, Landlord and Tenant shall and do hereby waive trial by jury.
31. No Oral Changes. This Lease may not be changed or terminated orally.
32. Estoppel Certificates. Tenant agrees, at any time and from time to time, upon not less than 10 days prior written notice by Landlord to execute, acknowledge and deliver to Landlord an estoppel certificate.
33. Remedies Cumulative. No reference to any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity.
34. No Waiver. No failure by Landlord to insist upon strict performance of any agreement, term, covenant, or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or any continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by Landlord of any breach by Tenant under this Lease shall constitute a waiver of any subsequent breach under this Lease.
35. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of New York. If any provisions of this Lease shall, to any extent, be held invalid or unenforceable, the remainder of this Lease shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.
36. Entire Agreement. This Lease contains the entire agreement of the parties with regard to the Premises. There are no oral agreements existing between them. This Lease may be amended by and only by an instrument executed and delivered by each party hereto.

37. Successors and Assigns. Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective permitted successors and assigns. In the event Landlord sells or transfers the Premises to a third party, this Lease shall continue in full force and effect and such purchaser or transferee shall be bound by all of the terms and conditions contained herein.
38. Force Majeure. If Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lockouts, impossibility of procuring materials, riots, insurrection or war ("force majeure"), performance of that act shall be excused for the period of the delay and the period for the performance of the act shall be extended for a period equivalent to the period of the delay, provided the party delayed shall give the other party written notice and full particulars of the force majeure within a reasonable time after the event occurs.
39. No Waste. Tenant shall not do or suffer any waste or damage, disfigurement or injury to the Premises or the Building or any part of either.
40. Holdover. Should the Tenant continue to occupy the Premises after the expiration of the Term hereof or after a forfeiture has occurred against the consent of the Landlord, such tenancy shall be from month-to-month and such month-to-month tenancy shall be under all the terms, covenants and conditions of this Lease and at one and one-half (1.5) times the fixed monthly rental set forth hereunder.

[Signatures on following page]

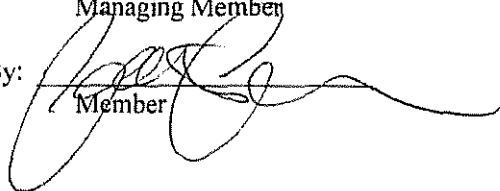
IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

116 BUSINESS PARK ASSOCIATES,
LLC

By: 
Member

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: 
Member

MOHAWK VALLEY EC, LLC

October 27, 2009

State of New York Health Department
Corning Tower
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12237

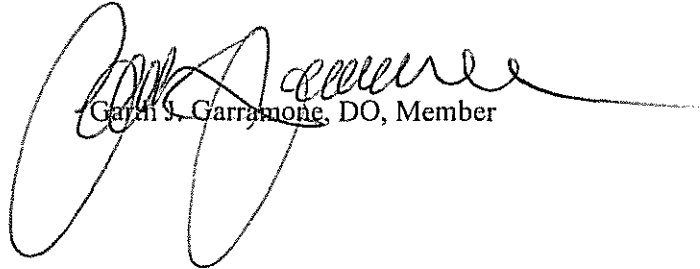
Re: Mohawk Valley EC, LLC

Ladies and Gentlemen:

This letter will confirm that in structuring the Mohawk Valley EC, LLC ambulatory surgery center project we have considered with our legal counsel both the Federal and New York State anti-kickback and self-referral laws. On this basis we have concluded that proceeding with the project is appropriate.

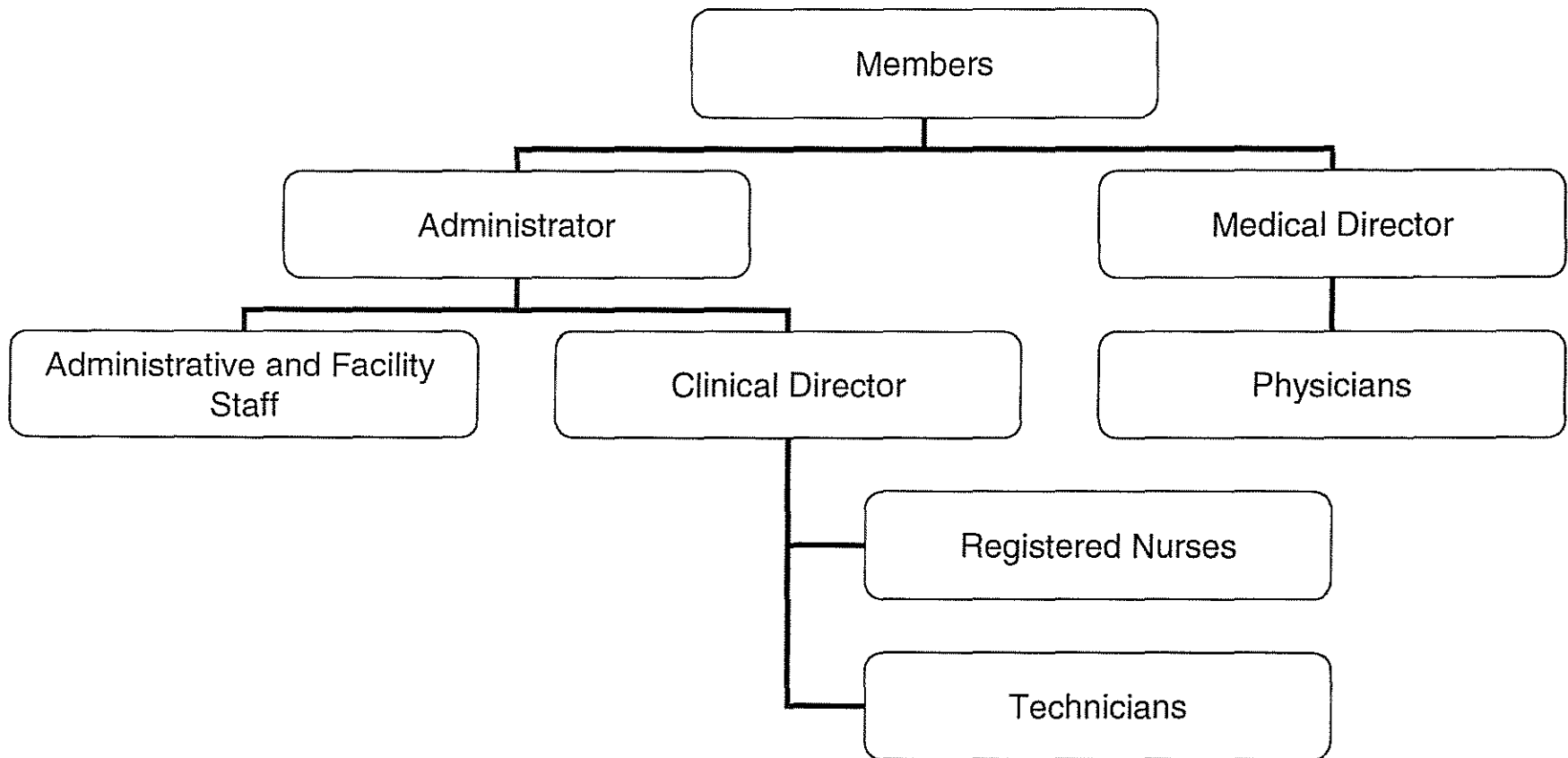
Very truly yours,

MOHAWK VALLEY EC, LLC



Garth J. Garramone, DO, Member

Mohawk Valley EC, LLC



FILING RECEIPT

=====

ENTITY NAME: MOHAWK VALLEY EC, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ONEI

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FILED:10/15/2009 DURATION:***** CASH#:091015000051 FILM #:091015000047

FILER:

EXIST DATE

WOOD & SMITH P.C.
110 WEST FAYETTE STREET

10/15/2009

SYRACUSE, NY 13202

ADDRESS FOR PROCESS:

THE LLC
110 BUSINESS PARK DRIVE
UTICA, NY 13502

REGISTERED AGENT:

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SERVICE COMPANY: NATIONWIDE INFORMATION SERVICES, INC. SERVICE CODE: 27 *

FEEs	235.00	PAYMENTS	235.00
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FILING	200.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	235.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

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08C18175

DOS-1025 (04/2007)

**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 214 of the Limited Liability Company Law

1. The name of the limited liability company (the "Company") is Mohawk Valley EC, LLC.
2. The date of the filing of the Articles of Organization is October 15, 2009.
3. The amendments effected by this Amended and Restated Articles of Organization are as follows:
 - a. To specify the address of the principal office of the Company;
 - b. To establish classes of members;
 - c. To subject any change in the management structure of the Company to the prior approval of the New York State Department of Health;
 - d. To limit the powers and purposes of the Company to the ownership and operation of a single specialty ambulatory surgery center providing endoscopy services licensed pursuant to New York Public Health Law Article 28; and
 - e. To subject changes to membership interests and voting rights in the Company to the provisions set forth in New York Public Health Law Section 2801-a(4)(b).
4. To accomplish amendment 3(a), as stated above, Article 2 of the Articles of Organization is hereby amended to read as follows:

"2. The principal office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502."
5. To accomplish amendment 3(b), as stated above, Article 4 of the Articles of Organization is hereby amended to read as follows:

"4. The Company shall have two classes of members: the Managing Member and the Hospital Members. Each class of member shall have such relative rights, powers, preferences and limitations as the Company's operating agreement may provide. The Company may establish additional classes, or series of classes, of members with such relative rights, designations, qualifications, preferences and duties as shall be set forth from time-to-time in the Company's operating agreement."
6. To accomplish amendment 3(c), as stated above, Article 5 of the Articles of Organization of the Company is hereby amended to read as follows:

"5. The Company shall be managed by its Members. Neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the approval of the New York Department of Health."

7. To accomplish amendment 3(d), as stated above, a new Article 6 of the Articles of Organization is hereby added to read as follows:

“6. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center exclusively providing gastroenterology services licensed under Article 28 of the Public Health Law known as “Mohawk Valley Endoscopy Center” located at 116 Business Park Drive, Utica, New York 13502.”

8. To accomplish amendment 3(e), as stated above, a new Article 7 of the Articles of Organization is hereby added to read as follows:

“7. Notwithstanding anything in the articles of organization or operating agreement to the contrary, any transfer, assignment or other disposition of any membership interest or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.”

9. The Articles of Organization are hereby restated to set forth its entire text as amended:

**ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 203 of the Limited Liability Company Law

1. The name of the limited liability company (the “Company”) is: Mohawk Valley EC, LLC.
2. The principal office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502.
3. The Secretary of State is designated as agent of the Company 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 Company served upon the Secretary is:

c/o the Company
110 Business Park Drive
Utica, New York 13502

4. The Company shall have two classes of members: the Managing Member and the Hospital Members. Each class of member shall have such relative rights, powers, preferences and limitations as the Company’s operating agreement may provide. The Company may establish additional classes, or series of classes, of members with such relative rights, designations, qualifications, preferences and duties as shall be set forth from time-to-time in the Company’s Operating Agreement.
5. The Company shall be managed by its Members. Neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the approval of the New York Department of Health.
6. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center exclusively providing gastroenterology services licensed under Article 28 of the

Public Health Law known as "Mohawk Valley Endoscopy Center" located at 116 Business Park Drive, Utica, New York 13502.

7. Notwithstanding anything in the Articles of Organization or Operating Agreement to the contrary, any transfer, assignment or other disposition of any membership interest or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.

IN WITNESS WHEREOF, these Amended and Restated Articles of Organization have been subscribed this 14th day of October, 2010.

MVEC HOLDINGS, LLC,
Managing Member of Mohawk Valley EC, LLC

By: 
Bradley Sklar, M.D., Member

**MOHAWK VALLEY EC, LLC
AMENDED AND RESTATED OPERATING AGREEMENT**

THIS OPERATING AGREEMENT is entered into as of October 15, 2010 to be effective on the Effective Date, by and among MVEC HOLDINGS, LLC ("Holdings"), FAXTON ST. LUKE'S HEALTHCARE ("FSLH") and ST. ELIZABETH MEDICAL CENTER ("SEMC") and MOHAWK VALLEY EC, LLC (the "Company").

RECITALS:

A. The Company's original members have entered into an Operating Agreement dated as of November 10, 2009 (the "Original Operating Agreement").

B. In connection with the admission of the Hospital Members, the restructuring of the physician ownership component of the Company and the receipt of PHC Approval, the Members and the Company wish to amend and restate the Original Operating Agreement as set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Company Law, as the same may be amended from time to time.
- 1.2. "Affiliate" shall mean, when used with reference to a specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person, (b) any Person that is an officer, partner or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of the specified Person and (d) any relative or spouse of the specified Person.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 6.6 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the four operating room, single-specialty ambulatory surgery center specializing in gastroenterology to be located at 116 Business Park Drive, Utica, New York 13502.

- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean Mohawk Valley EC, LLC, a New York limited liability company and its successors.
- 1.10. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP or its successors.
- 1.11. "PHC Approval" shall mean final approval by the Public Health Council of the Health Department of the establishment of the Company.
- 1.12. "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.
- 1.13. "Effective Date" shall mean the date on which the Company has received the PHC Approval and has filed its Amended and Restated Articles of Organization with the Secretary of State in the form approved by the Health Department.
- 1.14. "Health Department" shall mean the New York State Department of Health.
- 1.15. "Hospital Member(s)" shall mean FSLH and/or SEMC.
- 1.16. "Managing Member" shall mean Holdings.
- 1.17. "Member(s)" shall mean Holdings and the Hospital Members.
- 1.18. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and the right, if any, to vote or participate in management of the Company.
- 1.19. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined on a cash basis at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.20. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.21. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.22. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.

- 1.23. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.
- 1.24. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.25. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.26. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.27. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or a part of a Member's Membership Interest.
- 1.28. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.29. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 10.1 hereof.
- 2.2. Name. The name of the Company shall be "Mohawk Valley EC, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed for the sole purpose of constructing, owning and operating a four operating room, single-specialty ambulatory surgery center exclusively providing gastroenterology services located in Oneida County at 116 Business Park Drive, Utica, New York.
- 2.4. Effective Date of Agreement. This Amended and Restated Operating Agreement shall be effective on the Effective Date.
- 2.5. Superseding Effect. This Amended and Restated Operating Agreement shall amend, restate and supersede the Original Operating Agreement in its entirety.

3. ESTABLISHMENT OF CLASSES OF MEMBERS

- 3.1. Establishment of Membership Classes. The Company shall have two classes of Members: the Managing Member and the Hospital Members. Except for management and voting rights, the relative rights, powers, preferences and obligations of the Members are identical.
- 3.2. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.

4. MANAGEMENT AND VOTING RIGHTS

- 4.1. Management of the Company. The business and affairs of the Company shall be managed by the Managing Member. Except as set forth in Section 4.2, and notwithstanding anything to the contrary contained in the Act, all decisions with respect to the Company shall be made exclusively by the Managing Member. The Managing Member shall have the duty to conduct the affairs of the Company in the best interests of the Company. The management structure or the provisions setting forth such structure may not be deleted, modified or amended without the prior approval of the Health Department.
- 4.2. Hospital Member Voting Rights. Notwithstanding anything to the contrary contained in this Agreement or in the Act, except for the Hospital Member Voting Rights identified below, the Hospital Members have no voting rights and all decisions of every nature concerning the Company shall be made by the Managing Member. The following decisions shall require, in addition to the approval of the Managing Member, the approval of both Hospital Members (the "Hospital Member Voting Rights"):
 - a. Amend the Center's operating certificate to (i) increase the number of operating rooms in the Center beyond four or (ii) provide services other than gastroenterology services;
 - b. Amend the Company's Articles of Organization or this Agreement;
 - c. Incur individual capital expenditures (excluding medical equipment) in excess of \$100,000 or total capital expenditures, including medical equipment, in excess of \$250,000 per year following completion of the construction and equipping of the Center;
 - d. Make a call for mandatory additional capital contributions;
 - e. Issue additional Units of Membership Interest; and
 - f. Except as provided in Section 9.4, admit a Person as a Member and issue such Person Units Membership Interest.
- 4.3. No Authority. No act of any Member shall bind the Company unless such act has been authorized by the Managing Member.

- 4.4. No Exclusive Duty. The Managing Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Managing Member or to the income or proceeds derived therefrom. No Member shall incur any liability to the Company or to any of the other Members as a result of engaging in any other business or venture.
- 4.5. Transactions with Affiliates. The Company may enter into contracts or transactions with Affiliates of the Managing Member including, without limitation, DDM, so long as (a) the Company pays fair market consideration for items provided or services rendered and (b) any such contract or transaction is promptly disclosed to the Hospital Members. The Hospital Members acknowledge and agree that the Company is paying fair market rent under the lease between the Company and 116 Business Park Associates, LLC and fair market compensation under the Medical Director Services Agreement between the Company and DDM. The Hospital Members further acknowledge and agree that Affiliates of the Managing Member have no obligation to provide items or services at a discount or on terms more favorable than those generally provided by third parties. For purposes of Section 411(b) of the Act any contract or transaction that satisfies the requirements of subsection (a) and (b) above shall conclusively be deemed to be fair and reasonable as to the Company.
- 4.6. Limitation of Liability. The Managing Member shall have no personal liability to the Company or the Members for damages from any breach of duty in such capacity; provided, however, that the foregoing shall not eliminate liability of the Managing Member for a judgment or other final adjudication adverse to the Managing Member establishing that the Managing Member's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that the Managing Member personally gained in fact a financial profit or other advantage to which the Managing Member was not legally entitled.

5. OPERATIONAL MATTERS

- 5.1. Operations Committee. The Managing Member shall establish an Operations Committee which shall provide advice and recommendations to the Managing Member on matters including operations, personnel, budgeting, strategic planning, compliance and payer relationships. Members of the Operations Committee shall include one representative from each of the Hospital Members and three physician members of the Managing Member. The Operations Committee shall meet on at least a quarterly basis.
- 5.2. Compliance. The Operations Committee or a subcommittee of the Operations Committee shall serve as the Compliance Committee for the Center. The Compliance Committee shall designate a compliance officer and shall develop a compliance plan for the Center. At the request of any Member, which shall not be made more frequently than annually, the Company shall engage a third party to undertake a compliance audit.
- 5.3. Government Payers. The Center shall participate with all government or government-sponsored payers.

- 5.4. Charity Care Policy. The Center shall adopt a charity care policy.
- 5.5. Certain Referrals. The Hospital Members shall not take any actions or otherwise encourage its affiliated physicians to refer patients to the Center or to any of the physician members of the Managing Member ("Affiliated Member Physicians"). The Hospital Members shall not track or otherwise measure the referrals of its affiliated physicians to the Center or to any of the Affiliated Member Physicians. Compensation, if any, paid by the Hospital Members to its affiliated physicians pursuant to employment or personal services contracts shall not be not directly or indirectly related to the volume or value of referrals to the Center or to the Affiliated Member Physicians.

6. MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS

- 6.1. Capital Contributions.
- a. The Members shall make Capital Contributions to the Company in the amounts set forth on Exhibit A within 10 days following the Effective Date of this Agreement.
 - b. Credit Against Capital Contribution Obligation. All payments made by DDM or another Affiliate of the Managing Member for the benefit of the Company including fees of architects, consultants, attorneys, accountants and other advisors, filing fees, construction costs, deposits and other out-of-pocket expense paid by DDM or another Affiliate shall be credited against the Managing Member's Capital Contribution obligation and shall be deemed to be a Capital Contribution made by the Managing Member.
- 6.2. Issuance of Units. Upon payment of their respective Phase One Capital Contributions, each Member shall own the number of Units of Membership Interest set forth on Exhibit A, which Exhibit may be modified from time-to-time to reflect changes in ownership of Units or the admission of new Members. Such modifications shall not be considered amendments to this Agreement.
- 6.3. Remedies for Failure to Fund. If any Member shall fail to pay its Capital Contribution when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 10 days in which to cure such default. If, after 10 days, the Defaulting Member has not cured such default, then (a) the Managing Member may exercise its option to purchase the Defaulting Member's Membership Interest pursuant to Section 9.6; (b) the Company may apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) the Company may enforce the Defaulting Member's obligation to pay its Capital Contribution and recover attorneys' fees and costs of collection in addition to interest at 15% per annum accruing from the date the Capital Contribution was first required to have been paid.
- 6.4. No Mandatory Additional Capital Contributions. No Member shall be required to make additional Capital Contributions to the Company without the approval of all Members. If additional funds are necessary or desirable to accomplish the purposes or satisfy the obligations of the Company, the Managing Member may, among other things, offer all Members the opportunity to make loans or preferred investments in the Company with such interest rate, repayment terms and preferences as may be necessary to attract the required funds.

6.5. Guaranties.

- a. Each Member shall execute and deliver one or more guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center in such amounts, at such times and in such form as directed by the Managing Member (a "Member Guaranty"); provided, however, that the percentage of the obligations guaranteed by the Hospital Members may not exceed their respective Sharing Ratios (20%). If any Member shall fail to deliver its Member Guaranty within 10 days following request, the Member shall be in default and (a) the Managing Member may exercise its option to purchase under Section 9.6 or (b) the Company enforce the Member's obligation to deliver its Member Guaranty and recover attorneys' fees in connection with any enforcement action.
 - b. In the event one or more Members who have delivered a Member Guaranty pays in excess of its share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection.
- 6.6. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.
- 6.7. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.
- 6.8. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

7. ALLOCATIONS AND DISTRIBUTIONS

- 7.1. Allocation of Net Profits and Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.

- 7.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 7.3. Distributions. Net available cash flow of the Company shall be distributed to the Members pro rata to their Sharing Ratios at such times and in such amounts as the Managing Member shall determine.
- 7.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 7.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 7.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 7.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 7.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.
- 7.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.
- 7.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury

Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.

- 7.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 7.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 7.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 7.14. Returns and Other Elections. The Managing Member shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Managing Member.
- 7.15. Audited Financial Statements. The Company shall cause its financial statements to be audited annually by the Company's accounting firm.

8. BOOKS AND RECORDS

- 8.1. Books and Records. The Company shall keep and maintain at its principal office adequate books and records setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company. Any Member or its designated representative shall have the right, at any reasonable time and at its own expense to have access to and inspect and copy the contents of such books or records.
- 8.2. Reports. Within a reasonable period after the end of each quarter, each Member shall be furnished with a report containing a balance sheet as of the end of such quarter and statement of earnings. Annually, the Members will receive a balance sheet, statement of earnings, and changes in Member's equity and statement of cash flow for the year ended.
- 8.3. Tax Information. Necessary tax information shall be delivered to each Member as soon after the end of each fiscal year of the Company as is practicable, but no later than April 1.

9. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 9.1. Covenant Against Withdrawal. Except for Permitted Withdrawals, no Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 9.2. Permitted Withdrawals by Hospital Members. Upon the occurrence of any regulatory development, investigation, audit or other ruling which makes the ownership of a Membership Interest by a Hospital Member illegal under the federal anti-kickback statute, the Stark law and

- regulations or some other federal or state law affecting joint ventures or upon the occurrence of any regulatory development, investigation, audit or other ruling which causes the Hospital Member's ownership of its Membership Interest to jeopardize its tax-exempt status for its continued participation in the joint venture, the affected Hospital Member or Members may withdraw upon providing 90 days advance written notice to the Company. Upon such withdrawal the Managing Member shall purchase the Membership Interest of the withdrawing Hospital Member at the price and on the terms set forth in Sections 9.7 and 9.8 below.
- 9.3. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by the Managing Member and the Hospital Members and (b) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation, reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:
- a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law.
 - b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
 - c. The transferee shall have adopted and approved in writing this Agreement.
- 9.4. Permitted Transfers. Holdings shall have the unrestricted right to Transfer Units to one or more its members at such price and on such terms as Holdings may determine. Upon such Transfer and subject to the satisfaction of the requirements set forth in Section 9.3, such transferees shall automatically become a Member. Holdings acknowledges that its operating agreement requires its members to be current or former partners or employed physicians of DDM.
- 9.5. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.
- 9.6. Option to Purchase Membership Interest. If any Member (i) is adjudicated a bankrupt, voluntary or involuntary; (ii) makes an assignment for the benefit of creditors; (iii) applies for a judicial dissolution of the Company under the Act; (v) is no longer eligible to own an interest in an Article 28 ambulatory surgery center; or (vi) fails to timely fund its Capital Contribution obligation;; (each, a "Triggering Event"), such Member (an "Offering Member") shall be deemed to have offered to sell its entire Membership Interest to the Company (if the Offering Member is a Hospital Member it

shall be deemed to have offered to sell its entire Membership Interest to the other Hospital Member) on the following terms:

- a. The option to purchase shall be exercised not later than 180 days following notice of any such Triggering Event.
- b. The purchase price shall be established pursuant to Section 9.7 and paid in the manner provided in Section 9.8.

9.7. Calculation of Purchase Price. The purchase price for a Member's Membership Interest purchased by the Company or the Managing Member hereunder (the "Purchase Price") shall be determined by multiplying the Company's Book Value by the selling Member's Sharing Ratio; provided, however, that if the purchase is being made under Section 9.6 the Purchase Price shall be reduced by 30%. As used herein, "Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Triggering Event. Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:

- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
- b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
- c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
- d. The Company shall include as an asset 100% of the value of its accounts receivable valued by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period; and
- e. There is no goodwill in the Company, and no value shall be claimed for or attributed to it in determining the Purchase Price.

9.8. Payment of Purchase Price. The Purchase Price shall be paid as follows: (a) 20% in certified funds at closing and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the cash portion of the Purchase Price is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 36 equal consecutive monthly installments of principal and interest commencing 30 days following the closing date. The promissory note shall be unsecured and shall provide that in case of default all principal and

accrued interest shall become immediately due and payable at the holder's election. If the Company is the purchaser it shall have the right to set-off any amounts owing by the Member to the Company against the Purchase Price.

9.9. Closing. The closing of the purchase of a Membership Interest hereunder shall take place at the principal office of the Company. At closing the purchaser shall deliver the Purchase Price and the selling Member shall execute and deliver assignments legally sufficient to transfer the Membership Interest free and clear of all taxes, debts, claims, liens or encumbrances. The closing shall occur on the date designated by the Company.

9.10. Power of Attorney. Each Member appoints the Company as its agent and attorney-in-fact to execute and deliver all documents needed to convey its Membership Interest, if such selling Member is not present at the closing. This power of attorney is coupled with an interest.

10. DISSOLUTION AND TERMINATION

10.1. Dissolution of the Company. The Company may be dissolved by the Managing Member.

10.2. Procedure on Liquidation. Upon the dissolution of the Company, the Managing Member shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 10.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.

10.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:

- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
- b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;
- c. Third, to Members in accordance with their positive Capital Account balances.

11. INDEMNIFICATION

11.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Managing Member or a Hospital Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to

grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Managing Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company shall maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

- 11.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 11.1.

12. DISPUTE RESOLUTION

- 12.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

13. GENERAL PROVISIONS

- 13.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.

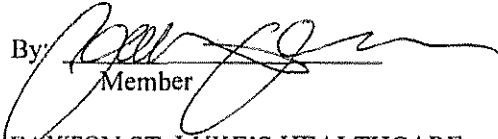
- 13.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.
- 13.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 13.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 13.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 13.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 13.7. Governing Law. This Agreement shall be governed by and construed in accordance, with the laws of the State of New York, with venue of any suit, action, or legal proceeding arising under, or relating to this Agreement being in a court of competent jurisdiction located in Oneida County, New York.
- 13.8. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.
- 13.9. Waiver of Action for Partition. In addition to being subject to Section 607 of the Act, each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 13.10. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.

- 13.11. Contract Modifications for Prospective Legal Events. In the event any state or Federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party hereto in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, the Members shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements among the Members.
- 13.12. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 13.13. Classification as Partnership. The Company intends to be classified as a partnership for Federal income tax purposes only. The Members agree to take such actions, make such elections and, if required, amend this Operating Agreement to assure that such classification is maintained.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: 
Member

FAXTON ST. LUKE'S HEALTHCARE

By: _____

Title: _____

ST. ELIZABETH MEDICAL CENTER

By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

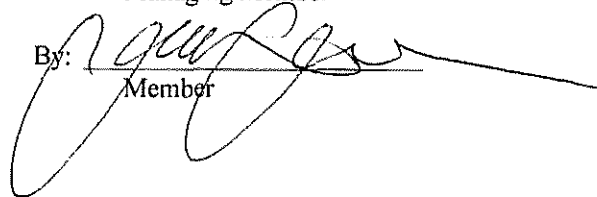
By: 
Member

EXHIBIT A

<u>Member</u>	<u>Maximum Capital Contrib. Obligation</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
MVEC Holdings, LLC	\$600,000	60	60%
Faxton St. Luke's Healthcare	\$200,000	20	20%
St. Elizabeth Medical Center	<u>\$200,000</u>	<u>20</u>	<u>20%</u>
	\$1,000,000	100	100%

**OPERATING AGREEMENT
OF
MVEC HOLDINGS, LLC**

THIS OPERATING AGREEMENT is entered into on October 6, 2010 by and among STANLEY P. WEISELBERG, M.D., NORMAN R. NESLIN, M.D., ROBERT R. PAVELOCK, M.D., BRADLEY F. SKLAR, M.D., RICHARD CHERPAK, M.D., GARTH J. GARRAMONE, D.O., BRETT GANDHI, M.D. and MVEC HOLDINGS, LLC (the "Company").

In consideration of the mutual promises contained herein the parties hereby agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Companies Law, as the same may be amended from time to time.
- 1.2. "Additional Funding Requirement" shall mean additional funds called pursuant to Section 4.2 hereof.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 4.5 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the single-specialty ambulatory surgery center specializing in gastroenterology located at 116 Business Park Drive, Utica, New York 13502 owned and operated by Mohawk Valley EC, LLC.
- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean MVEC Holdings, LLC, a New York limited liability company and its successors.
- 1.10. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP or its successors.
- 1.11. "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.

- 1.12. "Initial Capital Contributions" shall mean the Capital Contributions to be made by the Members as provided in Section 4.1.
- 1.13. "Majority Vote of the Members" shall mean the affirmative vote of a majority of all Members.
- 1.14. "Member" shall mean Stanley P. Weiselberg, M.D., Norman R. Neslin, M.D., Robert R. Pavelock, M.D., Bradley F. Sklar, M.D., Richard Cherpak, M.D., Garth J. Garramone, D.O., Brett Gandhi, M.D. and such other Persons who are admitted to the Company as additional or substitute Members.
- 1.15. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and any right to vote or participate in management of the Company.
- 1.16. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.17. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.18. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.19. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704 2(i)(3) of the Treasury Regulations.
- 1.20. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.
- 1.21. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.22. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.23. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.24. "Supermajority Vote of the Members" shall mean the affirmative vote of a number of Members equal to the total number of Members minus two.

- 1.25. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or any part of a Member's Membership Interest.
- 1.26. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.27. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 7.1 hereof.
- 2.2. Name. The name of the Company shall be "MVEC Holdings, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed to (a) own a membership interest in, and to be the Managing Member of Mohawk Valley, EC, LLC and (b) carry on, conduct or transact any business or other activities which a limited liability company formed under the Act may carry on, conduct or transact.

3. MEMBERS; MANAGEMENT OF COMPANY

- 3.1. Membership Interest. The number of Units of Membership Interest owned by each Member and their respective Sharing Ratios is set forth on Exhibit A attached hereto.
- 3.2. Membership Qualifications.
- a. Members shall be natural persons. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**
 - b. Members shall be current or former partners or physician employees of DDM.
- 3.3. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.
- 3.4. Management of the Company. The business and affairs of the Company shall be managed by the Members. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**

3.5. Action by Members.

- a. For voting purposes each Member shall have one vote.
- b. The following actions shall require a Supermajority Vote of the Members: (i) adopt, amend, restate or revoke the Articles of Organization or this Agreement; (ii) approve the dissolution of the Company; (iii) approve the sale, exchange or lease of all or substantially all of the Company's assets; (iv) make a call for Additional Funds under Section 4.2 or require the delivery of personal guaranties under Section 4.4; (v) borrow money or incur expenses in excess of \$50,000; (vi) approve a merger or consolidation of the Company with any other entity; or (vii) admit a new Member.
- c. Except as provided in subsection (b) above or as otherwise required under this Agreement, all other decisions of the Company shall require a Majority Vote of the Members.
- d. No act of a Member shall bind the Company unless such act has been authorized by a sufficient vote of Members as set forth in this Section.

3.6. Action by Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by Members whose voting power is sufficient to authorize such action.

4. **CAPITAL CONTRIBUTIONS**

- 4.1. Initial Capital Contributions. Each Member shall make an Initial Capital Contribution to the Company in the amount set forth on Exhibit A at times and in increments amounts as directed by a Majority Vote of the Members in order to fund the Company's capital contribution obligation to Mohawk Valley EC, LLC.
- 4.2. Additional Funding Requirement. If the Members by a Supermajority Vote of the Members determine that the Company requires additional funds, such funds shall be contributed by the Members in proportion to their Sharing Ratios within 10 days following the date of the call ("Additional Funds"). At the direction of the Members such Additional Funds shall either be in the form of a loan or Capital Contribution to the Company. For purposes of this Agreement, Additional Funds called for under this Section shall be referred to as the "Additional Funding Requirement."
- 4.3. Remedies for Failure to Fund. If any Member shall fail to pay his Initial Capital Contribution or Additional Funding Requirement when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 30 days in which to cure such default. If, after 30 days, the Defaulting Member has not cured such default, then upon a Majority Vote of the Members (excluding the Defaulting Member), the Company may (a) exercise its Right of Termination under Section 6.6; (b) apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) enforce the Defaulting Member's obligation to pay his Initial Capital Contribution or Additional Funding Requirement and recover attorneys' fees and costs of collection in addition to interest at 15% per

annum accruing from the date the Capital Contribution or Additional Funding Requirement was first required to have been paid.

4.4. Personal Guaranties.

- a. Each Member shall execute and deliver one or more guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center (a "Member Guaranty"). If any Member shall fail to deliver his Member Guaranty within 10 days following request, the Company may (a) redeem the Membership Interest of the Defaulting Member for \$1.00 and seek damages against the Defaulting Member or (b) enforce the Member's obligation to deliver his Member Guaranty and recover attorneys' fees.
- b. In the event one or more Members who have delivered a Member Guaranty pays in excess of his share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection. A Member who is not required to deliver a personal guaranty shall not be considered a Nonpaying Member hereunder.

4.5. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.

4.6. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.

4.7. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

- 4.8. Assignment of Membership Interests in Mohawk Valley EC, LLC to the Company. The Members own, in the aggregate, 100% of the membership interest in Mohawk Valley EC, LLC (the "MVEC Membership Interests"). The Members hereby assign to the Company, effective on the date hereof, all of their right, title and interest in and to the MVEC Membership Interests and the Company hereby accepts such assignment.

5. ALLOCATIONS AND DISTRIBUTIONS

- 5.1. Allocation of Net Profits and Net Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.
- 5.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.3. Distributions. Net available cash flow of the Company shall be distributed to the Members at such times and in such amounts as the Members shall determine.
- 5.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 5.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 5.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 5.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 5.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.

- 5.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.
- 5.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.
- 5.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 5.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 5.14. Records, Audits, and Reports. The Company shall maintain records and accounts of all operations and expenditures of the Company.
- 5.15. Returns and Other Elections. The Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Members.

6. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 6.1. Restriction Against Withdrawal. Except as otherwise provided in this Agreement, no Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 6.2. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by a Supermajority Vote of the Members; (b) the proposed transferee satisfies all membership criteria; and (c) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation,

reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:

- a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**
- b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
- c. The transferee shall have adopted and approved in writing this Agreement.
- d. Except for the right to receive allocations of Net Profits and Net Losses and to receive distributions, a transferee of a Membership Interest shall not have a right to become a Member unless approved by a Supermajority Vote of the Members.

6.3. Transferee Not a Member. Notwithstanding anything to the contrary contained in this Agreement, no Person acquiring all or a portion of a Membership Interest shall become a Member unless such person is approved by a Supermajority Vote of the Members.

6.4. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.

6.5. Termination of Membership: Involuntary Withdrawal. The Company shall have the right, which may be exercised at the Company's sole discretion, to terminate the membership of a Member under the circumstances described below (the "Right of Termination"). A termination of a Member's membership under this Section shall be considered an involuntary withdrawal from the Company by such Member. If the Company elects to exercise its Right of Termination, the Company shall provide written notice of such election to the affected Member (the "Terminated Member"), which notice shall set forth the date on which the membership has terminated or will terminate (the "Termination Date"). Effective on the Termination Date, without any further action required by the Terminated Member or the Company (a) the Terminated Member shall cease being a Member of the Company and shall have no further rights under this Agreement except the right to receive a Withdrawal Payment as provided in Section 6.5 hereof and (b) the Terminated Member's Membership Interest, and all rights therein, shall automatically transfer to the Company. A Majority Vote of the Members shall be required to cause the Company to exercise its Right of Termination under this Section.

- a. Right to Terminate if Member Ceases to be a DDM Partner or Employee. If a Member ceases to be a partner or employee of DDM the Company shall have a continuing right to exercise its Right of Termination with respect to such Member. The Termination Date shall be the date

the Member's partnership or employment with DDM terminated or the date he ceased to be a DDM partner or employee, unless a later date is set by the Company. If a Member elects to voluntarily withdraw as a partner of DDM, the Company may exercise its Right of Termination at any time on or after the date on which such Member first notified DDM of his intent to withdraw.

- b. Right to Terminate on Other Events. The Company shall have a continuing right to exercise its Right of Termination with respect to any Member who (i) has been adjudicated a bankrupt, voluntary or involuntary; (ii) has made an assignment for the benefit of creditors; (iii) has applied for a judicial dissolution of the Company under the Act; (iv) is ineligible to own an interest in an Article 28 ambulatory surgery facility; or (v) defaults under this Agreement, which default is not cured within 30 days following written notice.
- 6.6. Withdrawal Payment to Terminated Member. A Member whose membership has been terminated under Section 6.4 shall be entitled to receive a Withdrawal Payment which represents payment for the Member's Membership Interest. The Withdrawal Payment shall be paid within 90 days following the Termination Date (the "Payment Date"). The Withdrawal Payment shall be calculated pursuant to Section 6.7 and paid pursuant to Section 6.8.
- 6.7. Amount of Withdrawal Payment. The Withdrawal Payment shall be determined by multiplying the Company's Adjusted Book Value by the Terminated Member's Sharing Ratio. As used herein, "Adjusted Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Termination Date. Adjusted Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:
- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
 - b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
 - c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
 - d. The Company shall include as an asset 95% of the value of its accounts receivable calculated by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period;
 - e. If the Terminated Member had been a Member of the Company for at least four years following the date the Center began commercial operations, the Company shall also include as an asset a goodwill component (the "Goodwill Component") in an amount equal to one times (1x) the average of the Company's annual net operating income (in accordance with

generally accepted accounting principles), excluding extraordinary gains and losses, calculated before deduction of interest, taxes, depreciation and amortization for the most recent two fully completed prior calendar years; and

- f. If the Company has exercised its Termination Right for any of the reasons set forth in Section 6.4(b)(iii), (iv) or (v), the Withdrawal Payment (i) shall not include the Goodwill Component and (ii) shall be reduced by 30%.
- 6.8. Payment of Withdrawal Payment. The Company shall pay (a) 20% of the Withdrawal Payment by business check on the Payment Date and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the first payment is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 60 equal consecutive monthly installments of principal and interest commencing 90 days following the Payment Date. The promissory note shall be unsecured and shall provide that in case of default all principal and accrued interest shall become immediately due and payable at the holder's election. The Company shall have the right to set off any amounts owing by the Terminated Member to the Company against the Withdrawal Payment. Notwithstanding the terms of the promissory note, the Company, by a Supermajority Vote of the Members, may defer all or a part of the payments due thereunder if such payments, combined with Withdrawal Payments owing by the Company to other Terminated Members, exceed 25% of the Company's net cash flow available for distribution on an annual basis. All deferred payments shall accrue interest at 10% per annum and shall be paid in full not later than two years following the original maturity date of the promissory note.
 - 6.9. Release of Personal Guaranties. If the Terminated Member signed any personal guaranty on behalf of the Company, the Company shall use its best efforts to obtain a release of such guaranty(ies). If the Company is unable to obtain a release, the Company and the remaining Members shall indemnify the Terminated Member against any liability arising out of such guaranty.

7. DISSOLUTION AND TERMINATION

- 7.1. Dissolution of the Company. The Company may be dissolved by a Supermajority Vote of the Members.
- 7.2. Procedure on Liquidation. Upon the dissolution of the Company, the Members shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 7.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.

- 7.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:
- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
 - b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;
 - c. Third, to Members in accordance with their positive Capital Account balances.

8. INDEMNIFICATION

- 8.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company may maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.
- 8.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 8.1.

9. DISPUTE RESOLUTION

- 9.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

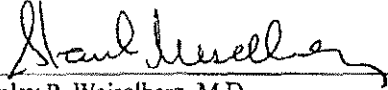
10. GENERAL PROVISIONS

- 10.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.
- 10.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.
- 10.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 10.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 10.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 10.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 10.7. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.

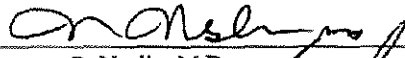
- 10.8. Waiver of Action for Partition. Each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 10.9. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.
- 10.10. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 10.11. Agreement Prepared by Attorney for Company. The parties each agree that the Company's counsel has prepared this Agreement in the course of its representation of the Company and not as counsel to any individual Member. The Company's counsel has advised the Company that interests of the Members may be adverse in certain circumstances. By its signature below, each Member confirms that he has either obtained the advice of separate counsel with respect to this Agreement or has independently evaluated the need for separate counsel and has knowingly elected not to retain same.

[Signatures on following page]

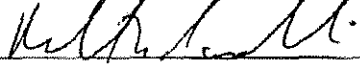
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.




Stanley P. Weiselberg, M.D.



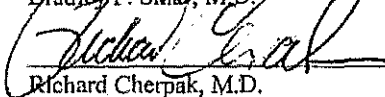
Norman R. Neslin, M.D.



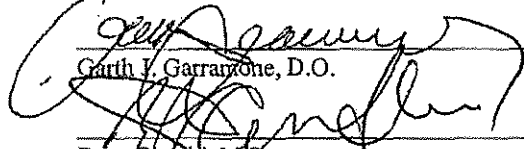
Robert R. Pavelock, M.D.



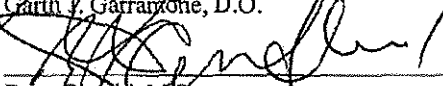
Bradley F. Sklar, M.D.



Richard Cherpak, M.D.




Garth J. Garramone, D.O.



Brett Gaudin, M.D.

MVEC HOLDINGS, LLC

By: 

Member

EXHIBIT A

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
Stanley P. Weiselberg, M.D. [REDACTED]	[REDACTED]	100	14.2858%
Norman R. Neslin, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Robert R. Pavelock, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Bradley F. Sklar, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Richard Cherpak, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Garth J. Garramone, D.O. [REDACTED]	[REDACTED]	100	14.2857%
Brett Gandhi, M.D. [REDACTED]	[REDACTED]	100	14.2857%

**MOHAWK VALLEY EC, LLC
AMENDED AND RESTATED OPERATING AGREEMENT**

THIS OPERATING AGREEMENT is entered into as of October 15, 2010 to be effective on the Effective Date, by and among MVEC HOLDINGS, LLC ("Holdings"), FAXTON ST. LUKE'S HEALTHCARE ("FSLH") and ST. ELIZABETH MEDICAL CENTER ("SEMC") and MOHAWK VALLEY EC, LLC (the "Company").

RECITALS:

A. The Company's original members have entered into an Operating Agreement dated as of November 10, 2009 (the "Original Operating Agreement").

B. In connection with the admission of the Hospital Members, the restructuring of the physician ownership component of the Company and the receipt of PHC Approval, the Members and the Company wish to amend and restate the Original Operating Agreement as set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Company Law, as the same may be amended from time to time.
- 1.2. "Affiliate" shall mean, when used with reference to a specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person, (b) any Person that is an officer, partner or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of the specified Person and (d) any relative or spouse of the specified Person.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 6.6 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the four operating room, single-specialty ambulatory surgery center specializing in gastroenterology to be located at 116 Business Park Drive, Utica, New York 13502.

- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean Mohawk Valley EC, LLC, a New York limited liability company and its successors.
- 1.10. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP or its successors.
- 1.11. "PHC Approval" shall mean final approval by the Public Health Council of the Health Department of the establishment of the Company.
- 1.12. "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.
- 1.13. "Effective Date" shall mean the date on which the Company has received the PHC Approval and has filed its Amended and Restated Articles of Organization with the Secretary of State in the form approved by the Health Department.
- 1.14. "Health Department" shall mean the New York State Department of Health.
- 1.15. "Hospital Member(s)" shall mean FSLH and/or SEMC.
- 1.16. "Managing Member" shall mean Holdings.
- 1.17. "Member(s)" shall mean Holdings and the Hospital Members.
- 1.18. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and the right, if any, to vote or participate in management of the Company.
- 1.19. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined on a cash basis at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.20. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.21. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.22. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.

- 1.23. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.
- 1.24. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.25. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.26. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.27. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or a part of a Member's Membership Interest.
- 1.28. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.29. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 10.1 hereof.
- 2.2. Name. The name of the Company shall be "Mohawk Valley EC, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed for the sole purpose of constructing, owning and operating a four operating room, single-specialty ambulatory surgery center exclusively providing gastroenterology services located in Oneida County at 116 Business Park Drive, Utica, New York.
- 2.4. Effective Date of Agreement. This Amended and Restated Operating Agreement shall be effective on the Effective Date.
- 2.5. Superseding Effect. This Amended and Restated Operating Agreement shall amend, restate and supersede the Original Operating Agreement in its entirety.

3. ESTABLISHMENT OF CLASSES OF MEMBERS

- 3.1. Establishment of Membership Classes. The Company shall have two classes of Members: the Managing Member and the Hospital Members. Except for management and voting rights, the relative rights, powers, preferences and obligations of the Members are identical.
- 3.2. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.

4. MANAGEMENT AND VOTING RIGHTS

- 4.1. Management of the Company. The business and affairs of the Company shall be managed by the Managing Member. Except as set forth in Section 4.2, and notwithstanding anything to the contrary contained in the Act, all decisions with respect to the Company shall be made exclusively by the Managing Member. The Managing Member shall have the duty to conduct the affairs of the Company in the best interests of the Company. The management structure or the provisions setting forth such structure may not be deleted, modified or amended without the prior approval of the Health Department.
- 4.2. Hospital Member Voting Rights. Notwithstanding anything to the contrary contained in this Agreement or in the Act, except for the Hospital Member Voting Rights identified below, the Hospital Members have no voting rights and all decisions of every nature concerning the Company shall be made by the Managing Member. The following decisions shall require, in addition to the approval of the Managing Member, the approval of both Hospital Members (the "Hospital Member Voting Rights"):
 - a. Amend the Center's operating certificate to (i) increase the number of operating rooms in the Center beyond four or (ii) provide services other than gastroenterology services;
 - b. Amend the Company's Articles of Organization or this Agreement;
 - c. Incur individual capital expenditures (excluding medical equipment) in excess of \$100,000 or total capital expenditures, including medical equipment, in excess of \$250,000 per year following completion of the construction and equipping of the Center;
 - d. Make a call for mandatory additional capital contributions;
 - e. Issue additional Units of Membership Interest; and
 - f. Except as provided in Section 9.4, admit a Person as a Member and issue such Person Units Membership Interest.
- 4.3. No Authority. No act of any Member shall bind the Company unless such act has been authorized by the Managing Member.

- 4.4. No Exclusive Duty. The Managing Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Managing Member or to the income or proceeds derived therefrom. No Member shall incur any liability to the Company or to any of the other Members as a result of engaging in any other business or venture.
- 4.5. Transactions with Affiliates. The Company may enter into contracts or transactions with Affiliates of the Managing Member including, without limitation, DDM, so long as (a) the Company pays fair market consideration for items provided or services rendered and (b) any such contract or transaction is promptly disclosed to the Hospital Members. The Hospital Members acknowledge and agree that the Company is paying fair market rent under the lease between the Company and 116 Business Park Associates, LLC and fair market compensation under the Medical Director Services Agreement between the Company and DDM. The Hospital Members further acknowledge and agree that Affiliates of the Managing Member have no obligation to provide items or services at a discount or on terms more favorable than those generally provided by third parties. For purposes of Section 411(b) of the Act any contract or transaction that satisfies the requirements of subsection (a) and (b) above shall conclusively be deemed to be fair and reasonable as to the Company.
- 4.6. Limitation of Liability. The Managing Member shall have no personal liability to the Company or the Members for damages from any breach of duty in such capacity; provided, however, that the foregoing shall not eliminate liability of the Managing Member for a judgment or other final adjudication adverse to the Managing Member establishing that the Managing Member's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that the Managing Member personally gained in fact a financial profit or other advantage to which the Managing Member was not legally entitled.

5. OPERATIONAL MATTERS

- 5.1. Operations Committee. The Managing Member shall establish an Operations Committee which shall provide advice and recommendations to the Managing Member on matters including operations, personnel, budgeting, strategic planning, compliance and payer relationships. Members of the Operations Committee shall include one representative from each of the Hospital Members and three physician members of the Managing Member. The Operations Committee shall meet on at least a quarterly basis.
- 5.2. Compliance. The Operations Committee or a subcommittee of the Operations Committee shall serve as the Compliance Committee for the Center. The Compliance Committee shall designate a compliance officer and shall develop a compliance plan for the Center. At the request of any Member, which shall not be made more frequently than annually, the Company shall engage a third party to undertake a compliance audit.
- 5.3. Government Payers. The Center shall participate with all government or government-sponsored payers.

- 5.4. Charity Care Policy. The Center shall adopt a charity care policy.
- 5.5. Certain Referrals. The Hospital Members shall not take any actions or otherwise encourage its affiliated physicians to refer patients to the Center or to any of the physician members of the Managing Member (“Affiliated Member Physicians”). The Hospital Members shall not track or otherwise measure the referrals of its affiliated physicians to the Center or to any of the Affiliated Member Physicians. Compensation, if any, paid by the Hospital Members to its affiliated physicians pursuant to employment or personal services contracts shall not be not directly or indirectly related to the volume or value of referrals to the Center or to the Affiliated Member Physicians.

6. MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS

- 6.1. Capital Contributions.
- a. The Members shall make Capital Contributions to the Company in the amounts and at the times set forth on Exhibit A.
 - b. Credit Against Capital Contribution Obligation. All payments made by DDM or another Affiliate of the Managing Member for the benefit of the Company including fees of architects, consultants, attorneys, accountants and other advisors, filing fees, construction costs, deposits and other out-of-pocket expense paid by DDM or another Affiliate shall be credited against the Managing Member’s Capital Contribution obligation and shall be deemed to be a Capital Contribution made by the Managing Member.
- 6.2. Issuance of Units. Upon payment of their respective Phase One Capital Contributions, each Member shall own the number of Units of Membership Interest set forth on Exhibit A, which Exhibit may be modified from time-to-time to reflect changes in ownership of Units or the admission of new Members. Such modifications shall not be considered amendments to this Agreement.
- 6.3. Remedies for Failure to Fund. If any Member shall fail to pay its Capital Contribution when due the Company shall give written notice of such default to such Member (a “Defaulting Member”) and the Defaulting Member shall have 10 days in which to cure such default. If, after 10 days, the Defaulting Member has not cured such default, then (a) the Managing Member may exercise its option to purchase the Defaulting Member’s Membership Interest pursuant to Section 9.6; (b) the Company may apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) the Company may enforce the Defaulting Member’s obligation to pay its Capital Contribution and recover attorneys’ fees and costs of collection in addition to interest at 15% per annum accruing from the date the Capital Contribution was first required to have been paid.
- 6.4. No Mandatory Additional Capital Contributions. No Member shall be required to make additional Capital Contributions to the Company without the approval of all Members. If additional funds are necessary or desirable to accomplish the purposes or satisfy the obligations of the Company, the Managing Member may, among other things, offer all Members the opportunity to make loans or preferred investments in the Company with such interest rate, repayment terms and preferences as may be necessary to attract the required funds.

6.5. Guaranties.

- a. Each Member shall execute and deliver one or more guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center in such amounts, at such times and in such form as directed by the Managing Member (a "Member Guaranty"); provided, however, that the percentage of the obligations guaranteed by the Hospital Members may not exceed their respective Sharing Ratios (20%). If any Member shall fail to deliver its Member Guaranty within 10 days following request, the Member shall be in default and (a) the Managing Member may exercise its option to purchase under Section 9.6 or (b) the Company enforce the Member's obligation to deliver its Member Guaranty and recover attorneys' fees in connection with any enforcement action.
 - b. In the event one or more Members who have delivered a Member Guaranty pays in excess of its share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection.
- 6.6. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.
- 6.7. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.
- 6.8. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

7. ALLOCATIONS AND DISTRIBUTIONS

- 7.1. Allocation of Net Profits and Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.

- 7.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 7.3. Distributions. Net available cash flow of the Company shall be distributed to the Members pro rata to their Sharing Ratios at such times and in such amounts as the Managing Member shall determine.
- 7.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 7.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 7.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 7.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 7.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.
- 7.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.
- 7.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury

Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.

- 7.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 7.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 7.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 7.14. Returns and Other Elections. The Managing Member shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Managing Member.
- 7.15. Audited Financial Statements. The Company shall cause its financial statements to be audited annually by the Company's accounting firm.

8. BOOKS AND RECORDS

- 8.1. Books and Records. The Company shall keep and maintain at its principal office adequate books and records setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company. Any Member or its designated representative shall have the right, at any reasonable time and at its own expense to have access to and inspect and copy the contents of such books or records.
- 8.2. Reports. Within a reasonable period after the end of each quarter, each Member shall be furnished with a report containing a balance sheet as of the end of such quarter and statement of earnings. Annually, the Members will receive a balance sheet, statement of earnings, and changes in Member's equity and statement of cash flow for the year ended.
- 8.3. Tax Information. Necessary tax information shall be delivered to each Member as soon after the end of each fiscal year of the Company as is practicable, but no later than April 1.

9. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 9.1. Covenant Against Withdrawal. Except for Permitted Withdrawals, no Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 9.2. Permitted Withdrawals by Hospital Members. Upon the occurrence of any regulatory development, investigation, audit or other ruling which makes the ownership of a Membership Interest by a Hospital Member illegal under the federal anti-kickback statute, the Stark law and

regulations or some other federal or state law affecting joint ventures or upon the occurrence of any regulatory development, investigation, audit or other ruling which causes the Hospital Member's ownership of its Membership Interest to jeopardize its tax-exempt status for its continued participation in the joint venture, the affected Hospital Member or Members may withdraw upon providing 90 days advance written notice to the Company. Upon such withdrawal the Managing Member shall purchase the Membership Interest of the withdrawing Hospital Member at the price and on the terms set forth in Sections 9.7 and 9.8 below.

- 9.3. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by the Managing Member and the Hospital Members and (b) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation, reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:
- a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law.
 - b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
 - c. The transferee shall have adopted and approved in writing this Agreement.
- 9.4. Permitted Transfers. Holdings shall have the unrestricted right to Transfer Units to one or more its members at such price and on such terms as Holdings may determine. Upon such Transfer and subject to the satisfaction of the requirements set forth in Section 9.3, such transferees shall automatically become a Member. Holdings acknowledges that its operating agreement requires its members to be current or former partners or employed physicians of DDM.
- 9.5. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.
- 9.6. Option to Purchase Membership Interest. If any Member (i) is adjudicated a bankrupt, voluntary or involuntary; (ii) makes an assignment for the benefit of creditors; (iii) applies for a judicial dissolution of the Company under the Act; (v) is no longer eligible to own an interest in an Article 28 ambulatory surgery center; or (vi) fails to timely fund its Capital Contribution obligation;; (each, a "Triggering Event"), such Member (an "Offering Member") shall be deemed to have offered to sell its entire Membership Interest to the Company (if the Offering Member is a Hospital Member it

shall be deemed to have offered to sell its entire Membership Interest to the other Hospital Member) on the following terms:

- a. The option to purchase shall be exercised not later than 180 days following notice of any such Triggering Event.
- b. The purchase price shall be established pursuant to Section 9.7 and paid in the manner provided in Section 9.8.

9.7. Calculation of Purchase Price. The purchase price for a Member's Membership Interest purchased by the Company or the Managing Member hereunder (the "Purchase Price") shall be determined by multiplying the Company's Book Value by the selling Member's Sharing Ratio; provided, however, that if the purchase is being made under Section 9.6 the Purchase Price shall be reduced by 30%. As used herein, "Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Triggering Event. Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:

- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
- b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
- c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
- d. The Company shall include as an asset 100% of the value of its accounts receivable valued by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period; and
- e. There is no goodwill in the Company, and no value shall be claimed for or attributed to it in determining the Purchase Price.

9.8. Payment of Purchase Price. The Purchase Price shall be paid as follows: (a) 20% in certified funds at closing and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the cash portion of the Purchase Price is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 36 equal consecutive monthly installments of principal and interest commencing 30 days following the closing date. The promissory note shall be unsecured and shall provide that in case of default all principal and

accrued interest shall become immediately due and payable at the holder's election. If the Company is the purchaser it shall have the right to set-off any amounts owing by the Member to the Company against the Purchase Price.

9.9. Closing. The closing of the purchase of a Membership Interest hereunder shall take place at the principal office of the Company. At closing the purchaser shall deliver the Purchase Price and the selling Member shall execute and deliver assignments legally sufficient to transfer the Membership Interest free and clear of all taxes, debts, claims, liens or encumbrances. The closing shall occur on the date designated by the Company.

9.10. Power of Attorney. Each Member appoints the Company as its agent and attorney-in-fact to execute and deliver all documents needed to convey its Membership Interest, if such selling Member is not present at the closing. This power of attorney is coupled with an interest.

10. DISSOLUTION AND TERMINATION

10.1. Dissolution of the Company. The Company may be dissolved by the Managing Member.

10.2. Procedure on Liquidation. Upon the dissolution of the Company, the Managing Member shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 10.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.

10.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:

- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
- b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;
- c. Third, to Members in accordance with their positive Capital Account balances.

11. INDEMNIFICATION

11.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Managing Member or a Hospital Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to

grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Managing Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company shall maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

- 11.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 11.1.

12. DISPUTE RESOLUTION

- 12.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

13. GENERAL PROVISIONS

- 13.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.

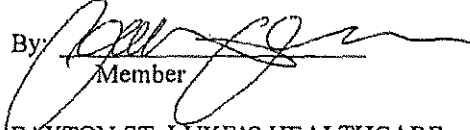
- 13.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.
- 13.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 13.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 13.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 13.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 13.7. Governing Law. This Agreement shall be governed by and construed in accordance, with the laws of the State of New York, with venue of any suit, action, or legal proceeding arising under, or relating to this Agreement being in a court of competent jurisdiction located in Oneida County, New York.
- 13.8. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.
- 13.9. Waiver of Action for Partition. In addition to being subject to Section 607 of the Act, each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 13.10. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.

- 13.11. Contract Modifications for Prospective Legal Events. In the event any state or Federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party hereto in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, the Members shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements among the Members.
- 13.12. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 13.13. Classification as Partnership. The Company intends to be classified as a partnership for Federal income tax purposes only. The Members agree to take such actions, make such elections and, if required, amend this Operating Agreement to assure that such classification is maintained.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: 
Member

FAXTON ST. LUKE'S HEALTHCARE

By: _____

Title: _____

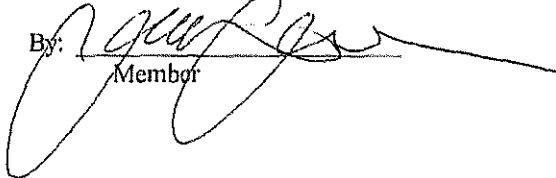
ST. ELIZABETH MEDICAL CENTER

By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member


By: 
Member

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MVEC HOLDINGS, LLC

By: _____
Member

FAXTON ST. LUKE'S HEALTHCARE

By: 
Title: Scott H. Perra, FACHE
President/CEO

ST. ELIZABETH MEDICAL CENTER

By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written,

MVEC HOLDINGS, LLC

By: _____
Member

FAXTON ST. LUKE'S HEALTHCARE

By: _____
Title: _____

ST. ELIZABETH MEDICAL CENTER

By: Andrew Kehhan
Title: President CEO

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

EXHIBIT A

<u>Member</u>	<u>Maximum Capital Contrib. Obligation</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
MVEC Holdings, LLC	\$660,000	60	60%
Faxton St. Luke's Healthcare	\$220,000	20	20%
St. Elizabeth Medical Center	<u>\$220,000</u>	<u>20</u>	<u>20%</u>
	\$1,100,000	100	100%

The Members shall make the following Capital Contributions within 10 days following the Effective Date of this Agreement:

MVEC Holdings, LLC:	\$600,000
Faxton St. Luke's Healthcare:	\$200,000
St. Elizabeth Medical Center:	\$200,000

If required in connection with the construction of the Center, the Members shall pay the balance of their maximum Capital Contribution obligation within 10 days following request by the Managing Member.



233 Genesee Street, Utica, NY 13501
CNY Business & Professional Banking

Attachment 7

October 18, 2010

Mohawk Valley EC, LLC
110 Business Park Drive
Utica, New York 13502

Dear Gentlemen:

Please be advised that Manufacturers and Traders Trust Company ("M&T Bank") would like to express its interest in providing construction financing, equipment financing and working capital financing for the new Ambulatory Surgery Center to be developed by Mohawk Valley EC, LLC to be located at 116 Business Park Drive Utica, New York. This letter is an outline of basic terms and conditions and should not be considered a commitment. Any commitment is subject to M&T Bank's credit approval process.

Based upon our initial review of the proposed construction project, M&T Bank would consider lending approximately \$1,810,972 to the borrower at a fixed rate for a term of ten years and based on an amortization of up to fifteen years. A loan to value of no greater than ninety percent would be required. The loan would be secured by a mortgage on the real estate as well as a general security interest in all assets of the borrower.

In addition, M&T Bank would consider an equipment term loan of up to \$500,000 to the borrower at a fixed rate for a term of up to seven years. The equipment loan would be secured by the equipment being purchased and a general security interest in all business assets of the borrower. Lastly, M&T Bank would consider a working capital term loan up to \$219,410 for a term of three to five years that would be secured by a general security interest in all assets of the borrower

M&T Bank may require guarantees and will be determined as part of the formal underwriting process. Based on the current rate environment, we would expect the fixed rate to be approximately 6.00%, however, these move up and down based upon the current rate environment.

We appreciate the opportunity to work with you and look forward to supporting this project. If you have any questions, please do not hesitate to contact me at 738-4834.

Sincerely,

David Manzelmann
Vice President

Mohawk Valley Endoscopy Center

Pro-Forma Balance Sheet

***** Revised October 2010 *****

		Beginnning of Year One January 2011
ASSETS		
CURRENT ASSETS		
Cash Balances	\$	785,241
Accounts Receivable - Net	\$	-
TOTAL CURRENT ASSETS	\$	785,241
PROPERTY		
Facilty Improvements	\$	1,732,750
Equipment (net of depreciation)	\$	500,000
TOTAL PROPERTY	\$	2,232,750
INTANGIBLE ASSETS		
Project Start-Up Costs & Application Fees	\$	543,446
TOTAL ASSETS	\$	3,561,437
LIABILITIES AND NET ASSETS		
CURRENT LIABILITIES		
TOTAL CURRENT LIABILITIES	\$	-
LONG-TERM LIABILITIES		
Bank Loan for Working Capital	\$	219,345
Bank Loan for Facility Improvements & Start-Up	\$	1,810,972
Bank Loan for Equipment	\$	500,000
TOTAL LONG-TERM LIABILITIES	\$	2,530,317
TOTAL LIABILITIES	\$	2,530,317
LLC CAPITAL	\$	1,031,119
TOTAL LIABILITIES AND LLC CAPITAL	\$	3,561,437

ATTACHMENT 9

EQUIPMENT LEASES

MVEC will lease a portion of its equipment:

	Purchase Price	Annual Lease Expense
Scopes	\$778,894	\$62,312
Misc. Equipment	\$ 21,106	\$ 1,688
Total Equipment Leased	\$800,000	\$64,000

November 4, 2009

Ted Kondzielawa
Digestive Disease Medicine of Central New York, LLP
110 Business Park Drive
Utica, New York 13502

Re: Lease between 116 Business Park Associates, LLC and Mohawk Valley EC, LLC

Dear Mr. Kondzielawa:

I am a licensed real estate broker with substantial experience in the rental of medical facilities and, therefore, I have familiarity with the rental rates for medical space, including ambulatory surgical space, in the Utica area.

You have provided me a draft of a Lease between 116 Business Park Associates, LLC ("Landlord") and Mohawk Valley EC, LLC ("Tenant") under which Landlord will lease to Tenant approximately 11,436 square feet located at 116 Business Park Drive, Utica, New York to be used by Tenant as an ambulatory surgery center. Pursuant to the Lease Landlord will pay all costs of building-out the surgery center which is estimated to be around \$2,300,000.

Tenant will pay base rent in the amount of \$42.50 per square foot plus utilities. Real estate taxes and operating expenses are included in the base rent subject to escalation, if any, over the base year based on the percentage of the building occupied by Tenant. The term of the Lease is 10 years and Tenant has the right to extend the Lease for two additional five-year terms. The base rent remains constant over the initial 10 year term and increases if the Lease is extended. Tenant is not obligated to pay rent until the date that the surgery center improvements have been completed and Tenant is ready to begin business operations.

Based on the foregoing, it is my opinion that the rent payable by the Tenant under the Lease is within customary and reasonable rates for comparable medical real estate in this area.

Very truly yours,



Anthony D. Hathaway
Managing Director



November 12, 2009

Syracuse Office
PO Box 3
5786 Widewaters Parkway
Syracuse, NY 13214
(315) 445-1030 • Fax: (315) 445-2074

Mr. Ted Kondzlelawa
Digestive Disease Medicine of Central New York, LLP
110 Business Park Drive
Utica, New York 13502

Re: Lease between 116 Business Park Associates, LLC and Mohawk Valley EC, LLC

Dear Mr. Kondzlelawa-

I am a New York State licensed real estate broker with substantial experience in the rental of medical facilities and, therefore, I have familiarity with the market comparable rental rates for medical space including, but not limited to ambulatory surgical space in the Utica, New York market area.

You have provided me a Draft Lease between 116 Business Park Associates, LLC ("Landlord") and Mohawk Valley EC, LLC ("Tenant") under which Landlord will lease to Tenant approximately 11,436 square feet located at 116 Business Park Drive, Utica, New York; to be used by Tenant as an ambulatory surgery center. Pursuant to the Lease, the Landlord will pay all Tenant Improvement or the costs of building-out the surgery center estimated to be around \$2,300,000.

The Tenant will pay base rent in the amount of \$42.50 per square foot plus utilities. Real estate taxes and operating expenses are included in the base rent subject to escalation, if any, over the base year based on the percentage of the building occupied by Tenant. The term of the Lease is 10 years and Tenant has the right to extend the Lease for two (2) additional five (5) year terms. The base rent remains constant over the primary ten (10) year Lease Term and increases if the Lease is extended beyond the primary Lease Term. The Tenant is not obligated to pay rent until the date that the surgery center improvements have been completed and Tenant is ready to begin business operations.

Based on the foregoing, it is my opinion that the rent payable by the Tenant under the Lease is within customary and reasonable rates for comparable medical real estate in this area.

Sincerely,

Michael Kalet
Director of Sales / Broker Associate
Pyramid Brokerage Company, Inc.
A Cushman & Wakefield Alliance Member
(315)445-8534
mikekalet@pyramidbrokerage.com

Email transmission only
MK/kv



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TOTAL P. 02

Sources of Cash

Mohawk Valley Endoscopy Center will be funded by its owners, proportional to the ownership stake held by each. The amount contributed by each entity is shown below:

	Working Capital Contribution	Project Cost Contribution	Total Contribution
MVEC Holdings, LLC	\$ 131,607	\$ 487,064	\$ 618,672
Faxton St. Luke's Healthcare	\$ 43,869	\$ 162,355	\$ 206,224
St. Elizabeth Medical Center	\$ 43,869	\$ 162,355	\$ 206,224
TOTAL	\$ 219,345	\$ 811,774	\$ 1,031,119

Within MVEC Holdings, LLC the amount contributed by each of the seven physician owners will be equal: \$18,801 for working capital, \$69,581 for project cost, for a total contribution of \$88,382. Each member has adequate cash on hand or marketable securities to support the equity contribution.

Curriculum Vitae

Dr. Garth J. Garramone

CURRENT STATUS:

Currently Partner/Owner: Digestive Disease Medicine of Central New York, Utica, NY.
Licensed to practice medicine in the state of New York.
Board certified in Internal Medicine; August of 2000.
Board certified in Gastroenterology; November 2003.

FELLOWSHIP TRAINING:

2000-2003: Fellowship in Gastroenterology at Nassau University Medical Center, East Meadow, NY; major affiliate of SUNY Stony Brook Medical School and Lenox Hill Hospital.

RESIDENCY TRAINING:

1998-2000: Residency in Internal Medicine; University of Massachusetts/Memorial Hospital, Worcester, MA.

1997-1998: Medical Internship; University of Massachusetts/Memorial Hospital, Worcester, MA.

EDUCATIONAL BACKGROUND:

1993-1997: University of New England College of Osteopathic Medicine, Biddeford, ME.: *D.O. Degree.*

1992-1993: William M. Scholl College of Podiatric Medicine, Chicago, IL.

1990-1992: Utica College of Syracuse University, Utica, NY. BS in Human Studies/Economics.

1988-1990: Hamilton College, Clinton, NY.

RESEARCH/PUBLICATIONS:

Papers

Endoscopic Ultrasound Findings in Esophageal Intramural Pseudodiverticulosis. Garth J. Garramone, D.O., David I. Weltman, M.D., Marcio Curvelo, M.D., Carylann Hadjyane, M.D., Crescens Pellecchia, M.D., Ali Karakurum, M.D., Nassau University Medical Center, East Meadow, NY. *Paper Accepted to Gastrointestinal Endoscopy January 2003.*

Poster Presentations

Gastrointestinal Histoplasmosis Involving the Stomach and Colon defining a patient with AIDS.
Garth J. Garramone, DO, Daniel Freese, DO, Carylann Hadjyane, MD, Crescens Pellecchia, MD, Ali Karakurum, MD.
Nassau University Medical Center, East Meadow, NY. *Presented at The American College of Gastroenterology 67th Annual Scientific meeting, October 2002. Seattle, Washington.*

Superior Mesenteric Artery Vasculitis as a cause of abdominal pain in a patient with Systemic Lupus Erythematosus.
Garth J. Garramone, DO, Omer Masood, MD, Crescens Pellecchia, MD. Nassau University Medical Center, East Meadow, NY. *Presented at The American College of Gastroenterology 66th Annual Scientific Meeting, October 2001. Las Vegas, Nevada.*

Curriculum vitae pg. 2.
Garth J. Garramone, DO

Poster Presentations-continued

Toxic methemoglobinemia induced by topical benzocaine spray application during endoscopy.

Ali S. Karakurum, MD, Carylann Hadjiyane, MD, Garth J. Garramone, DO, Imran Zaffer, MD, Crescens Pellecchia, MD.
Nassau University Medical Center, East Meadow, NY. Presented at The American College of Gastroenterology 66th Annual Scientific Meeting, October 2001. Las Vegas, Nevada.

Subhepatic Abscess from a spilled gallstone 2.5 years after laparoscopic cholecystectomy.

Garth J. Garramone, DO, Christopher Elsyad, MD, Carylann Hadjiyane, MD, Crescens Pellecchia, MD, Ali Karakurum, MD.
Nassau University Medical Center, East Meadow, NY. Presented at The American College of Physicians New York Downstate Scientific Meeting, March 16th, 2002. New York, NY.

Abstracts Published

Endoscopic Ultrasound of Esophageal Intramural Pseudodiverticulosis.

Garth J. Garramone, DO, Chand Mathur, MD, David I. Weltman, MD, Carylann Hadjiyane, MD
Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology, September 2001, vol. 96, s14.

Hepatic Hydrothorax confirmed by technetium scan before TIPS placement in a cirrhotic patient.

A. Shehata, MD, Garth J. Garramone, DO, Carylann Hadjiyane, MD, Ali S. Karakurum, MD, Crescens Pellecchia, MD,
Published in The American Journal of Gastroenterology, September 2001, vol. 96, s258.

Superior Mesenteric Artery vasculitis as a cause of abdominal pain in a patient with Systemic Lupus Erythematosus.

Garth J. Garramone, DO, Omer Masood, MD, Crescens Pellecchia, MD. Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology, September 2001, vol. 96, s200.

Subhepatic abscess from a spilled gallstone 2.5 years after laparoscopic cholecystectomy.

Garth J. Garramone, DO, Carylann Hadjiyane, MD, Ahmed Shehata, MD, Crescens Pellecchia, MD.
Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology September 2001, vol.96, s121.

Toxic methemoglobinemia induced by topical benzocaine application during endoscopy.

Ali S. Karakurum, MD, Carylann Hadjiyane, MD, Garth J. Garramone, MD, Imran Zaffer, MD, Crescens Pellecchia, MD
Published in The American Journal of Gastroenterology, September 2001, vol. 96, s257.

Awards

2003 FELLOW OF THE YEAR; Nassau University Medical Center, East meadow, LI, NY

ORGANIZATIONS AND COMMITTEES

American College of Gastroenterology

American Gastroenterology Association

Medical Society of Central New York

American College of Physicians

Credentials Committee Faxton-St. Lukes Healthcare 2008

Dysphagia Guidelines Committee Faxton-St. Lukes Healthcare 2005

TEACHING

Lecturer: Critical Care Conference of Central New York; Gastrointestinal Emergencies 2005-2008

Active in teaching Medical Students and Family Practice Residents on their GI rotations with me. Students from UNECOM and St. Elizabeth Family Practice Program.

Guest Lecturer in Central New York Colon Cancer Awareness Program 2009

COMMUNITY/INTERESTS

Sponsor for Upstate Cerebral Palsy

Sponsor/Donations to the House of the Good Sheppard

Sponsor Mohawk Valley Blues Society 2007

Operation Sunshine for under privileged children



CONTINUING MEDICAL EDUCATION

Currently enrolled in the ABIM continuing medical education and board recertification program. 120 CME credits.

2009: Practical Reviews in Gastroenterology. 30 CME credits.

2008: ACG Annual PostGraduate course and Meeting. Orlando, FL. 16 CME credits.

2007: ACG Annual Post Graduate course and Meeting, Philadelphia, PA. 16 CME credits.

2002: ACG Annual PostGraduate course and Board Review. Seattle, WA. 16 CME credits.

2001: ACG Annual PostGraduate course and Board Review. Las Vegas, NV. 16 CME credits.

2007: MKSAP 13-90 CME credits.

2008: Mayo Clinic Gastroenterology and Hepatology Board Review. 29.5 CME credits.

2007: ACG update and recertification course. 4 CME credits.

2005-2008: Practical Reviews in Gastroenterology/CME only. 57 CME credits.

2005: MLMIC Risk Management Course. 6 CME credits.

2005-2007: UptoDate. 24.25 CME credits.

2001: Update in Gastroenterology, Hepatology and Nutrition. 18th Annual Course, Columbia Presbyterian Hospital. 16 CME credits.

2002: Recent Advances in HCV therapy: A Specialists Perspective. Garden City, NY. 6 CME credits.

2002: William Steinberg Board Review Course in Gastroenterology. Arlington, Virginia. 29 CME credits.

2002: New York Society for Gastrointestinal Endoscopy Hands-On Course in Endoscopy. New York, New York. 6 CME credits.

2003: Endoscopic Workshop in Therapeutic and Diagnostic ERCP. New York, New York. 6 CME credits.

TRANSFER AGREEMENT

THIS AGREEMENT is entered into October 15, 2010 by and between **FAXTON-ST. LUKE'S HEALTHCARE (ST. LUKE'S CAMPUS)**, with its principal office located at 1656 Champlin Avenue, New Hartford, New York 13503 (the "Hospital") and **MOHAWK VALLEY EC, LLC**, with offices located at 116 Business Park Drive, Utica, New York 13502 (the "Facility").

RECITALS:

- A. The Hospital's St. Luke's Campus is a Medicare participating hospital capable of providing acute emergency medical care.
- B. The Facility is an Article 28-licensed ambulatory surgery center.
- C. The Hospital and the Facility desire to cooperate in order to assure continuity of care and treatment appropriate to the needs of each patient should a patient, while in the care of the Facility, need urgent or emergent services beyond the capabilities of the Facility.

NOW, THEREFORE, the parties hereby agree as follows:

1. Should the Facility determine that a patient in its care is in need of emergency or urgent medical care beyond the Facility's scope and capabilities and that transfer to a hospital is appropriate, the Hospital agrees to accept the transfer of the patient and to provide emergency and/or urgent medical care through its Emergency Department pursuant to the Hospital's normal policies and procedures and subject to this Agreement.
2. The Facility shall arrange for transportation of the patient to the Hospital. The Facility shall ensure that the method of physically transporting the patient is safe and medically approved by the responsible physician. The Hospital will accept responsibility for the patient upon arrival at the Hospital. Whenever a patient is transferred, the Facility shall undertake its best efforts to see that any and all personal property and any and all medical, clinical, admission, transfer and discharge information about the patient is transferred with the patient to the Hospital or provided shortly after the patient's arrival. Hospital shall arrange for all personal property so transferred to be stored safely in a place known and reasonably accessible to the patient or to a person or agency legally authorized to act in the patient's behalf.
3. Intake of the patients shall occur through the Hospital's Emergency Department, which shall be responsible for coordinating any and all other services offered by the Hospital as may be ordered for the patient.
4. Treatment of such transferred patient shall be determined by the Hospital's Emergency Department physician, who shall be a member of the Hospital's medical staff. The Emergency Department physician may, in his or her sole discretion, collaborate with the medical staff at the Facility to the degree appropriate for continuity, efficiency, economy and quality of care purposes and subject to the consent of the patient. Notwithstanding the foregoing, the parties acknowledge and agree that upon arrival at the Hospital's Emergency Department, the Emergency Department physician shall have sole authority with regard to the patient's care.
5. The Hospital meets the qualifications to accept transfers from the Facility set forth in 10 NYCRR 755.2(a) and 42 CFR 416.41.

6. Neither Hospital nor Facility shall be responsible for payment for care rendered by the Hospital or any individual physician to patients transferred from the Facility. Payment for care of patients transferred from the Facility shall be the sole responsibility of the patient and/or patient's third party payer. Notwithstanding the foregoing, patients transferred from the Facility shall be seen and treated without regard to their ability to pay.
7. Nothing in this Agreement is intended, nor should it be construed, as limiting the rights of either party to contract with any third party for the same or similar services.
8. Hospital and Facility shall each maintain a written copy of this Agreement in the appropriate administrator's office to be made available to the Department of Health upon request.
9. This Agreement shall commence on the date that the Facility begins commercial operations and shall be in effect for a period of 12 months thereafter. Thereafter, it shall automatically renew for an unlimited number of additional one-year terms, unless either party provides the other with written notice at least 30 days prior to the expiration of any one-year term that it does not consent to the automatic renewal. Notwithstanding the foregoing, this Agreement may be terminated at any time, with or without cause, by either party upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

FAXTON-ST. LUKE'S HEALTHCARE

By: 

Title: President / CEO

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

TRANSFER AGREEMENT

THIS AGREEMENT is entered into October 15, 2010 and between **ST. ELIZABETH MEDICAL CENTER**, with its principal office located at 2209 Genesee Street, Utica, New York 13501 (the "Hospital"), and **MOHAWK VALLEY EC, LLC**, with offices located at 116 Business Park Drive, Utica, New York 13502 (the "Facility").

RECITALS:

- A. The Hospital is a Medicare participating hospital capable of providing acute emergency medical care.
- B. The Facility is an Article 28-licensed ambulatory surgery center.
- C. The Hospital and the Facility desire to cooperate in order to assure continuity of care and treatment appropriate to the needs of each patient should a patient, while in the care of the Facility, need urgent or emergent services beyond the capabilities of the Facility.

NOW, THEREFORE, the parties hereby agree as follows:

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3. Intake of the patients shall occur through the Hospital's Emergency Department, which shall be responsible for coordinating any and all other services offered by the Hospital as may be ordered for the patient.
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ST. ELIZABETH MEDICAL CENTER

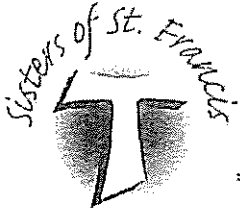
By: _____

Title: _____

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member



Congregation Offices
2500 Grant Boulevard • Syracuse, NY 13208-1797 • 315-634-7000 • Fax 315-634-6973

www.sosf.org • e-mail sisters@osfsyr.org

June 13, 2008

Sister Gretchen Gilroy OSF Chair
Board of Trustees
St. Elizabeth Medical Center
Utica, NY

Dear Sister Gretchen:

I am pleased to inform you that at the Annual Meeting of the Members of the corporation held on May 29, 2008, the following actions were taken:

1. Approval of the Articles of Incorporation
2. Approval of the changes in the By-laws
3. Approval of the new Trustees Fred Matt and Catherine McDonough Cominsky

The Members wish to extend their thanks to all Trustees for faithfully executing their responsibilities in carrying out the mission of St. Elizabeth Medical Center. May God bless all of you!

Sincerely,

Sister Patricia Burkard OSF

Sister Patricia Burkard OSF
General Minister and President of the Members
Sisters of St. Francis of the Neumann Communities.



St. Elizabeth Medical Center

2209 Genesee Street
Utica, New York 13501-5999
(315) 798-8100
www.stemc.org

BYLAWS

Revised and Approved:

Sister Patricia Burkard
General Minister

Dated: May 14, 2008



Congregation Offices
2500 Grant Boulevard • Syracuse, NY 13208-1797 • 315-634-7000 • Fax 315-634-6973

www.sosf.org • e-mail sisters@osfsyr.org

June 13, 2008

Sister Gretchen Gilroy OSF Chair
Board of Trustees
St. Elizabeth Medical Center
Utica, NY

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The Members wish to extend their thanks to all Trustees for faithfully executing their responsibilities in carrying out the mission of St. Elizabeth Medical Center. May God bless all of you!

Sincerely,

Sister Patricia Burkard OSF

Sister Patricia Burkard OSF
General Minister and President of the Members
Sisters of St. Francis of the Neumann Communities.

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Article I - Organization

- 1.1 The name of the corporation is St. Elizabeth Medical Center ("Corporation").
- 1.2 St. Elizabeth Medical Center, a Roman Catholic institution, was incorporated under the name of St. Elizabeth's Hospital and Home on February 8, 1870, as a membership corporation under the laws of the State of New York.
- 1.3 The post office address of the Corporation's principal office is: 2209 Genesee Street, Utica, NY 13501.

Article II - Community Role & Purpose

- 2.1
 - A. To maintain and restore health by providing diagnostic and treatment services for inpatients and outpatients.
 - B. To provide educational activities and programs in the health care professions.
 - C. To participate, so far as circumstances may warrant, in any activity designed and carried on to promote the general health or welfare of the community.

Article III - Corporate Members

- 3.1 The Corporate Members of the Corporation shall be the General Minister and Councillors of the Sisters of St. Francis of the Neumann Communities (hereinafter at times referred to as "Congregation").
- 3.2 The Congregation from time to time shall meet and elect, from among the members of the Congregation, the General Minister and the Councillors who shall also serve as the Corporate Members of the Corporation.

Article IV - Meeting of Corporate Members

- 4.1 **Annual Meeting of the Corporate Members**
 - A. The annual meeting of the Corporate Members of the Corporation will be held in the State of New York, during the second calendar quarter of each year for the purpose of the transaction of such business as may properly come before this meeting.
 - B. At the annual meeting of the Corporate Members of the Corporation, the Corporate Members shall elect Trustees to the Board of Trustees of the Corporation and appoint the President and Chief Executive Officer for such terms as may be required.
- 4.2 **Special Meetings**

Special meetings of the Corporate Members of the Corporation may be called by the General Minister when she deems it to be in the best interest of the Corporation or at the request of three Corporate Members of the Corporation.

4.3 Notice of Meetings

Notice of annual meetings of the Corporate Members shall be given at least ten days prior to the date of such meetings, and notice of special meetings shall be given at least two days prior to the date of such meetings. The notice shall specify the object of the meetings.

4.4 Waiver of Notice of Meetings of the Corporate Members

Whenever the Corporate Members are authorized to take any action after notice as referred to in Section 4.3, any Corporate Member entitled to the notice may waive the right to notice if such waiver is submitted in writing to the person chairing the meeting of the Corporate Members.

4.5 Reserved Powers to the Corporate Members

The following powers shall be reserved to the Corporate Members to exercise and shall be referred to as Reserved Powers:

- A. To change the philosophy, mission, and purpose of the Corporation.
- B. To adopt and/or amend the Certificate of Incorporation.
- C. To adopt and/or amend the Bylaws.
- D. To elect the Board of Trustees and to remove Board members with or without cause.
- E. To appoint the President and the Chief Executive Officer of the Corporation.
- G. To approve the purchase, sale, lease, mortgage of real property; to approve the purchase, sale, or gift of capital assets.
- H. To approve the merger, consolidation, or affiliation of the Corporation with another corporation, organization, or program.
- I. To approve the dissolution of the Corporation and disposition of assets.

4.6 Action by the Corporate Members Without a Meeting

Any action required or permitted to be taken at a regular or special meeting of the Corporate Members may be taken without a vote if consent in writing, setting forth the action so taken is signed by all the Corporate Members.

4.7 Participation in Meetings of the Corporate Members by Electronic Means

Any one or more Corporate Members may participate in meetings of the Corporate Members by means of a conference telephone or any other telecommunication 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 the meeting.

4.8 Participation by Proxy at Meetings of the Corporate Members

Every Member of the Corporation entitled to vote at any meeting of the Corporate Members may vote by proxy. A proxy shall be in writing and shall be revocable at the pleasure of the member executing it. Unless the duration of the proxy is specified, it shall be invalid after 11 months from the date of its execution.

Article V - Board of Trustees

5.1 Board of Trustees' Organization

- A. The Corporation shall be governed by a Board of Trustees consisting of not fewer than nine nor more than fifteen and shall be responsible for directing the operation of the Medical Center in accordance with its mission. No contracts, arrangements or other agreements may limit or diminish the responsibility of the Board of Trustees in any way. As the governing body of the Corporation, the Board of Trustees and its individual Trustees are ultimately responsible for compliance with all applicable Federal, State, and local laws, including the New York State Public Health Law, Mental Hygiene Law and the Education Law. The Medical Center administration and the Medical Staff shall provide services and information to the Board of

Trustees. The Medical Staff and the Medical Center administration must report their activities and decisions to the Board of Trustees at the regularly scheduled meetings or sooner in the cases described herein.

- B. At its annual meeting, the Board of Trustees shall adopt, review or revise its Bylaws as appropriate, subject to the approval of the Corporate Members. The minutes of the meeting shall reflect this review and approval of each of the subjects described in this paragraph. The minutes shall reflect the committee reports as required by these Bylaws.

5.2 Trustees' Qualifications

Individual Trustees should possess such basic qualities as honesty, integrity, a sense of justice, sound moral character and evidence of commitment to community health and welfare, and shall be selected for their ability to participate effectively in fulfilling the board's responsibilities. Each Trustee is required to attend at least 50% of the regular scheduled meetings of the Board of Trustees, unless legitimately excused.

5.3 Election of Trustees

- A. The Board of Trustees shall recommend to the Corporate Members, individuals for election to the Board of Trustees at the Annual Meeting of the Corporation or such other meetings as may be required.
- B. The Trustees shall be elected at the Annual Meeting or such other meeting of the Corporate Members of the Corporation and shall serve a term as set out in the Bylaws.
- C. The President of the Medical Staff shall be elected by the Medical Staff of St. Elizabeth Medical Center and shall be an ex-officio member of the Board of Trustees with the same authority and responsibility as all other members of the Board of Trustees. The Medical Staff President's term of office as a Trustee shall coincide with his term as President of the Medical Staff.

5.4 Conflict of Interest

Any duality of interest or possible conflict of interest on the part of any Trustee shall be disclosed to the other Trustees and made a matter of record, particularly when such interest becomes a matter of action by the Board of Trustees. Any Trustee having a duality of interest or possible conflict of interest on any matter shall not vote on the matter; cannot be counted in determining the quorum for any vote on the matter; cannot participate in the deliberations nor use his/her personal influence on the matter; and any such transaction shall be at least as fair and reasonable to the Corporation as would otherwise then be obtainable by the Corporation. The minutes of the meeting shall reflect that such disclosure was made. The foregoing requirements shall not be construed as preventing any such trustee from briefly stating his/her position in the matter or from answering pertinent questions of other trustees, since his/her knowledge may be of great assistance. Any new Trustee will be advised of this policy upon entering upon the duties of his/her office.

5.5 Powers, Duties and Responsibilities

- A. The Board of Trustees shall oversee the control and management of the affairs and interests of the Corporation, and shall ensure the provision of quality care to patients. The Board of Trustees is further responsible to ensure the effective functioning of activities related to performance improvement, risk management, appointment to the Medical Staff, as well as financial oversight. Members of the Board of Trustees are expected to be stewards and advocates of the Corporation's Mission.
- B. 1. The Corporate Members, upon the recommendation of the Board of Trustees, shall appoint a President and Chief Executive Officer who is responsible to the Board of Trustees for the

management of the Medical Center. This function shall not be delegated to or shared with any organization except under a management authority contract approved by the Commissioner pursuant to Article 405.3 of Title 10 of the New York Code of Rules and Regulations. The Chief Executive Officer's responsibilities shall include, but not be limited to the duties set out in Article IX of these Bylaws. The Chief Executive Officer shall be qualified for his or her responsibilities through education and experience. If the Chief Executive Officer and the President of the Corporation is not the same person, the Chief Executive Officer shall be a non-voting ex officio member of the Board of Trustees and all Board of Trustees' Committees, except the Audit and Compliance Committee of the Board of Trustees.

2. The Board of Trustees shall elect the Vice President, Secretary, Treasurer and such other officers as these Bylaws require to perform such duties as are set out in these Bylaws or established by the Board of Trustees. The Vice President, Secretary, Treasurer and such other officers identified as necessary by the Board of Trustees shall be responsible to the Board of Trustees for the management of the Medical Center under the direction and oversight of the President and Chief Executive Officer.

- C. The Board of Trustees shall appoint a physician referred to in Part 405 of Title 10 of the New York Code of Rules and Regulations as the Medical Director, who is qualified for membership on the Corporation's Medical Staff and who shall be responsible for directing the Medical Staff organization in accordance with provisions of Article 405.4 of Part 405 of Title 10 of the New York Code of Rules and Regulations. Such appointment shall be made after consultation with the Medical Staff and with the recommendation of the Chief Executive Officer.
- D. The Board of Trustees shall ensure that the Medical Staff has written Bylaws. The Board of Trustees shall retain the authority to approve Medical Staff Bylaws and any other Medical Staff rules and regulations. All members of the Corporation's Medical Staff must abide by the rules, regulations and Bylaws of the Medical Center and the current Ethical and Religious Directives of the United States Conference of Catholic Bishops that apply to healthcare organizations; and practice only with the scope of privileges granted by the Board of Trustees. All members of the Corporation's Medical Staff are accountable to the Board of Trustees for the quality of care provided to patients.

5.6 Vacancies and Removal

Any Trustee may resign at any time by giving written notice to the President or the Secretary. Such resignation, which may or may not be made contingent on formal acceptance, shall take effect on the date of receipt or at any later date specified therein. Any Trustee may be removed, with or without cause, by a majority vote of the Corporate Members of the Corporation.

5.7 Trustees Emeritus

Trustees who have served and retired shall be designated Trustees Emeritus. They shall be invited to attend meetings of the Board of Trustees, but shall have no obligation to attend. Trustees Emeritus shall have no power to vote. The term of a Trustee Emeritus shall be no greater than four years.

5.8 Terms of Trustees

- A. Trustees shall be elected to serve for a term of four years and shall be eligible for one additional four-year term. Trustees shall be eligible for a further additional four-year term if they are off the Board of Trustees for at least two years.
- B. The following members of the Board of Trustees shall serve without term limitations:
 - 1. The Chairperson of the Board of Trustees;
 - 2. President of the Corporation; and
 - 3. Vice President of the Corporation.

Article VI - Meetings of Board of Trustees

6.1 Regular Meetings

The Board of Trustees shall hold a regular meeting at the Medical Center six times per year during the months of January, March, May, July, September and November, the dates and times of these meetings will be announced by the President. The regular meeting of the Board of Trustees held in May shall be known as the Annual Meeting of the Corporation.

6.2 Purpose of the Meetings and Minutes

The Board of Trustees meets to evaluate the conduct of the Medical Center including the care and treatment of patients, as well as its own performance. Based on these evaluations, the Board of Trustees shall take necessary action sufficient to correct noted problems. A record of all Board of Trustees and Committees of the Board of Trustees Meetings and proceedings must be kept, which record shall reflect a summary of the business conducted including findings, conclusions, and recommendations. These recorded Minutes shall be maintained for review and analysis.

6.3 Special Meetings

Special meetings of the Board of Trustees may be called at anytime by the President of the Corporation or by the Chairperson of the Board of Trustees or, in their absence, by the Vice President of the Corporation upon the written request of three members of the Board of Trustees. The notice for a Special Meeting shall state the business for which the special meeting has been called and no business other than that stated in the notice shall be transacted at such special meeting.

6.4 Quorum

For regular or special meetings of the Board of Trustees or any Committee of the Board of Trustees, a quorum shall be at least one-half of the total number of Trustees eligible to vote at the meeting of the Board of Trustees or of the Committee for which the meeting has been called.

6.5 Notice of Meetings

Notice of regular meetings of the Board of Trustees shall be given at least ten days prior to the date of such meetings, and notice of special meetings shall be given at least two days prior to the date of such meetings. The notice shall specify the object of the meetings and shall be in writing.

6.6 Waiver of Notice of Meetings of the Board of Trustees

Whenever the Board of Trustees are authorized to take any action after notice as referred to in this Article VI, any Trustee entitled to the notice may waive the right to notice if such waiver is submitted in writing to the Secretary of the Corporation.

6.7 Action by the Trustees Without a Meeting

Any action required or permitted to be taken at a regular or special meeting of the Board of Trustees may be taken without a vote if consent, in writing, setting forth the action so taken is signed by all the Trustees.

6.8 Participation in Meetings of the Board of Trustees by Electronic Means

It is the preference of the Corporation to have attendance at meetings of the Board of Trustees and its Committees be in person. However, if there are circumstances where this is not possible, any one or more Trustees may participate in meetings of the Board of Trustees by means of a conference telephone or any other telecommunication 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 the meeting.

Article VII - Officers

7.1 Officers

The officers of the Corporation shall be a Chairperson, President, Vice President, Secretary, Treasurer, and such other officers as the Board of Trustees may designate. The General Minister of the Congregation or her designee shall be the Chairperson and have such rights and privileges as are afforded to the Trustees. The President shall be appointed by the Corporate Members. The remaining officers of the Corporation shall be elected by the Board of Trustees at the Annual Meeting of the Board of Trustees. They shall hold office for such period as may be established by the Corporate Members or the Board of Trustees at the time of the Officers' respective appointments.

7.2 Chairperson of the Board

The Chairperson shall call all meetings of the Board of Trustees to order and shall have such other duties as are set out in these Bylaws. Her primary duties shall include, but not be limited to ensure that the Mission of the Corporation is consistent with the Mission of the Sisters of St. Francis of the Neumann Communities which are the Sponsors of the Corporation and shall serve as the primary point of contact between the Corporation and the Corporate Members.

7.3 President

The President shall preside at all meetings of the Board of Trustees. In the absence of the Chairperson of the Board, the President shall call all meetings of the Board of Trustees to order and shall be an ex officio member of all Committees of the Board of Trustees, unless specifically indicated otherwise in these Bylaws.

7.4 Vice President

The Vice President shall act as President in the President's absence and, when so acting, shall have his or her power and authority.

7.5 Secretary

The Secretary shall act as Secretary of the Board of Trustees, shall send appropriate notices and prepare agenda for all meetings of the Board of Trustees, shall act as custodian of all records and reports, and shall be responsible for the keeping of adequate records of all meetings of the Board of Trustees and its Committees.

7.6 Treasurer

The Treasurer shall have custody of all funds of the Corporation. The Treasurer shall ensure that a true and accurate accounting of the financial transactions of the Corporation is accomplished. Reports of such transactions are presented by the Finance Committee to the Board of Trustees.

Article VIII - Committees of the Board of Trustees

8.1 Committees

Committees of the Board of Trustees shall be standing or special. All Committee members and Chairpersons shall be appointed by the President with the consent of the Board of Trustees. Standing committees shall be the Executive Committee, the Finance Committee, the Quality Oversight Committee, the Nominating Committee, the Long Range Planning Committee, Medical Ethics Committee, the Audit and Compliance Committee, the Pension Committee and such other Committees as the Board of Trustees may authorize. Each Committee meeting shall have an agenda and shall submit minutes of its meeting to the Board of Trustees and to the Secretary. Minutes must be kept of all Committee meetings and must reflect a summary of the business conducted, including findings, conclusions, and recommendations. The minutes maintained by the Secretary of the Corporation shall be subject to inspection by any members of the Board of Trustees and the Corporate Members in the office of the Secretary.

8.2 Executive Committee

The Executive Committee shall consist of the President and the Secretary of the Corporation and members of the Board of Trustees that are appointed as set out in Section 8.1 of these Bylaws. The President shall be the Chairperson of the Executive Committee. The Executive Committee shall have power to transact all regular business of the Corporation during the period between the meetings of the Board of Trustees, subject to any prior limitation imposed by the Board of Trustees, and with the understanding that all matters of major importance will be referred to the Board of Trustees at a subsequent meeting. Minutes of the Executive Committee meetings shall be submitted to the Board of Trustees and its actions shall be subject to approval or disapproval at the next regular meeting of the Board of Trustees.

8.3 Finance Committee

- A. The function of the Finance Committee is oversight. Management is responsible for the preparation, presentation and integrity of the Corporation's financial statements. Management is responsible for maintaining appropriate accounting and financial reporting principles and policies and internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. The independent auditors are responsible for planning and conducting proper audits and reviews.
- B. The Finance Committee shall consist of the Treasurer of the Corporation and the Chairperson of the Finance Committee and such other Trustees who are appointed as set out in Section 8.1 at the annual meeting of the Corporation. The Finance Committee must have at least one Independent member who has accounting or related financial management expertise. "Independent" members of the Committee shall be defined as those members of the Committee who do not receive any compensation from the Medical Center other than for Board or Committee service; or who do not themselves or have any family member who transacts business with the Medical Center; or who are not in a position where his or her income could be affected by the Medical Center's decisions. The Medical Center's executives who serve on or staff the Committee shall not be considered to be Independent members of the Committee and they shall be precluded from voting in any transaction addressed in this Section 8.3. "Accounting or related financial management expertise" shall mean a member of the Committee who shall have a working familiarity with finance and/or accounting practices.
- C. The Finance Committee shall have the following responsibilities:
1. overseeing the Chief Executive Officer's development of a budget for the Corporation showing the expected receipts, income and expense for the ensuing year;
 2. recommending for adoption by the Board of Trustees a budget developed by the Chief Executive Officer for the ensuing year;
 3. reviewing financial reports that report on the financial condition of the Corporation which shall include reviewing the investment activities of the Corporation;
 4. reviewing and making recommendations to the Board of Trustees on any request by the Chief Executive Officer for the Corporation to enter into any substantial transaction or incur a significant increase in debt according to standards established by the Board of Trustees;
 5. retaining the Corporation's independent Certified Public Accountants to provide external financial auditing to the Medical Center. This shall include, but not be limited to:
 - a. having unfettered communication with the firm, receiving reports directly from the firm regarding the audit, receiving observations from the firm

regarding management and the firm's assessment of management's internal financial control system.

- b. resolving any disputes between the firm and management and reviewing and responding to any major changes to critical accounting policies and practices.
- c. reviewing all of the services provided by the firm, including reviewing who is principally leading the audit; what the character of the relationship between the Medical Center and the firm so that changes can be made if necessary; and assuring the firm's independence.
- d. reviewing financial statements audited by the firm.

The functions of the Finance Committee under this Section 8.3 C.5. shall be performed by the members of the Finance Committee who are Independent.

6. engaging in such other activities or responsibilities as may be delegated to the Finance Committee by the Board of Trustees or the Executive Committee.

8.4 Nominating Committee

The Nominating Committee shall consist of those Trustees appointed as set out in Section 8.1 at the annual meeting of the Corporation. The Nominating Committee shall have the duty of nominating, at the Annual Meeting of the Corporation, and at any other meetings when vacancies are to be filled, candidates to be considered for election as Trustees or Officers. Nominations shall be provided to the Board of Trustees after recommendation from the President. Recommendations and references may provide a basis for judging whether an individual possesses the necessary qualifications. The Committee shall consider the qualifications of Trustees as set out in Section 5.2 of these Bylaws.

8.5 Long Range Planning Committee

The Long Range Planning Committee shall consist of the Chairperson of the Board of Trustees, President, the Vice President of the Corporation, and members of the Board of Trustees appointed as set out in Section 8.1 at the annual meeting of the Corporation. The Long Range Planning Committee shall review, advise and recommend to the Board of Trustees immediate and long range plans to assure that the Corporation's programs are meeting the health needs of the community and to ensure that the Corporation is operated in accordance with the mission and philosophy established by the Corporate Members. The Long Range Planning Committee shall review the Corporation's strategic plan on no less frequently than an annual basis and provide input as necessary to the Corporation's management and to the Board of Trustees on the Corporation's strategic plan.

8.6 Ethics Committee

The Ethics Committee shall consist of the Chairperson of the Board of Trustees and the President of the Corporation, the President of the Medical Staff (who serves as a Trustee) and two Trustees appointed as set out in Section 8.1 at the annual meeting of the Corporation. The Chairperson of the Medical Ethics Committee shall also serve as ex officio member of the Ethics Committee on issues of medical ethics.

- A. The Committee shall review issues associated with Corporation's ethics which shall include, but not be limited to business ethics and medical ethics that involve the care of patients at the Corporation or by any of its employees. It shall consider ethical and religious issues that are referred to it by the Corporation's administration, members of the Medical Staff or employees of the Corporation and it shall consider those issues in the context, where applicable, of the then current "Ethical and Religious Directives for Catholic Health Care Services" as established by the United States Conference of Catholic Bishops (hereinafter "Directives") that are applicable to healthcare. The Committee will make recommendations to the administration, Medical Director and the Medical Staff as

appropriate based upon matters that are referred to it; and provide a copy of its Minutes to the Board of Trustees.

The duties of the Ethics Committee shall be set out in the Committee's charge that is approved by the Board of Trustees.

B. Medical Ethics Committee of Management and the Medical Staff

1. The Medical Ethics Committee of Management and the Medical Staff shall report to and operate as a subcommittee of the Board of Trustees' Ethics Committee and it shall consist of its chairperson(s) and members of the Committee appointed jointly by the President of the Corporation and the President of the Medical Staff along with other persons necessary, namely: members of Corporation's administration, clergy, social service, nursing service, community members, legal counsel and any and all others necessary for ethical decision making.
2. Duties:
 - a. Review issues associated with medical ethics or bioethics that involve the care of patients at the Corporation or by any of its employees or its Medical Staff;
 - b. Consider ethical and religious issues that are referred to it by the Corporation's Board of Trustees, administration, members of the Medical Staff or employees of the Corporation and it shall consider those issues in the context, where applicable, of the then current Directives;
 - c. Make recommendations to the Board of Trustees' Ethics Committee, administration, Medical Director and the Medical Staff as appropriate based upon matters that are referred to it; and provide a copy of its Minutes to the Board of Trustees' Ethics Committee.
 - d. Take steps to implement policies regarding ethical issues such as advanced directives, do-not-resuscitate policies and the provision of life sustaining treatment modalities in accordance with the mission and philosophy of the Corporation and applicable law;
 - e. Provide clinical ethics consultations on individual cases when so requested by anyone involved with the care of the patient, such consultations may be done to provide support for the physicians, to assist with difficult ethical decisions or for the resolution of ethical conflicts involving differences of opinion on a particular case, such consultations will be performed by the Committee as a whole if time permits, or if on an urgent basis, by the Chairperson or his designee, the findings of such consultations may be entered into the patient's medical records, but shall be of an advisory nature only;
 - f. Act as an educational resource to the Corporation, the Medical Staff, patients, and community regarding medical ethics or bioethics issues;
 - g. Perform concurrent and retrospective review of ethical decisions and issues, in order to enhance the educational process regarding clinical ethics or bioethics.
 - h. Ensure that patient care services are delivered in compliance with "The Ethical and Religious Directives" as developed by the United States Conference of Catholic Bishops as amended and may be in force at any point in time.

8.7 Quality Oversight Committee

The Quality Oversight Committee shall consist of the following members: the Chairpersons of the Hospital and Ambulatory Care Quality Improvement Committees; three Trustees, one of whom is a physician, the President of the Medical Staff or his designee; the Vice-Presidents with responsibility over Medical Affairs, Quality Improvement, Nursing and Risk Management, and the Vice President of the Corporation. The Committee will be responsible for overseeing organization wide quality management and performance improvement activities. It will receive and make recommendations on reports from the Hospital Quality Improvement Committee; the Ambulatory Care Quality Improvement Committee; the Medical Staff, including Credentials, Peer Review and disciplinary activities, and the Corporation's departments regarding the assessment and improvement of the quality of services provided. Minutes documenting the Committee's findings and recommended actions will be submitted to the Board of Trustees for approval.

8.8 Audit and Compliance Committee

A. The function of the Audit and Compliance Committee is oversight and to assist the Board of Trustees in its oversight responsibilities by: overseeing management's systems of internal auditing and internal controls; overseeing the Corporation's Conflict of Interest program and resolving conflicts of interest or potential conflicts of interest; and overseeing the Corporate Compliance activities of the Corporation.

B. The Audit and Compliance Committee shall consist of at least three Trustees appointed as set out in Section 8.1 at the annual meeting of the Corporation. All the members of the Committee shall be Independent. "Independent" members of the Committee shall be defined as those members of the Committee who do not receive any compensation from the Corporation other than for Board or Committee service; or who do not themselves or have any family member who transacts business with the Corporation; or who are not in a position where his or her income could be affected by the Corporation's decisions. The Medical Center's executives who serve on or staff the Committee shall not be considered to be Independent members of the Committee and they shall be precluded from voting in any transaction addressed in this Section 8.8.

C. The Audit and Compliance Committee shall have the following responsibilities:

1. Select and retain non-financial independent external auditors.
2. Provide input into the Finance Committee's retention of independent external financial auditors.
3. Oversight of internal controls through evaluation of regular management reports, including reports from the Corporation's internal auditor about its monitoring of internal controls.
4. Oversight of corporate conflicts of interest. The Committee shall review and propose modifications to the Corporation's conflict of interest policy and evaluate conflicts of interest for effectiveness and propriety.
5. Corporate Compliance matters.
 - a. Review the Corporate Compliance Plan on a periodic basis, to consider changes to the plan. Make recommendations to the Board of Trustees on changes to the plan.
 - b. Review the minutes of each Corporate Compliance Committee meeting, and monitor the results of the Compliance Program.
 - c. Serve as a resource to the Compliance Officer and management on compliance issues.
 - d. Review and approve the audit schedule proposed by the Compliance Officer.
 - e. Report to the Board of Trustees at least semi-annually, regarding the status of the Compliance Plan.

8.9 Pension Committee

- A. The Pension Committee shall consist of the President and the Vice President of the Corporation and three Trustees appointed as set out in Section 8.1 at the annual meeting of the Corporation. The Pension Committee's membership shall share common religious bonds and convictions with the Congregation.
- B. The Pension Committee shall perform the following functions:
 - 1. Provide the Board of Trustees level oversight and administration of the Corporation's employee pension and retirement plans.
 - 2. Serve as the Administrator of the St. Elizabeth Medical Center Employees' Retirement Plan.
 - 3. Make recommendations to the Board of Trustees to approve changes to the St. Elizabeth Medical Center Employees' Retirement Plan's Plan Documents and operational systems.
 - 4. Quarterly review the financial results of investment manager actions of the St. Elizabeth Medical Center Employees' Retirement Plan. Meet at least annually to review the valuation of the Plan.
 - 5. Make recommendations to the Board of Trustees after receiving recommendations from management of the Corporation relative to continuation or changes in
 - a. investment managers,
 - b. Plan Trustee, and
 - c. investment policy for investments.
 - 6. Review investment policy of St. Elizabeth Medical Center Employees' Retirement Plan to be followed by the Plan Trustee and investment managers for the investments of St. Elizabeth Medical Center Employees' Retirement Plan.
 - 7. Take all steps that are reasonably possible to advise management and the Board of Trustees whenever the St. Elizabeth Medical Center Employees' Retirement Plan fails to meet minimum funding and regulatory requirements as those requirements are applicable to a going concern.
 - 8. Such other duties as designated by the Board of Trustees.

8.10 Special Committee

Special committees may be appointed by the President, with the consent of the Board of Trustees, for such special tasks as circumstances warrant. A special committee shall limit its activities to the accomplishment of the task for which it is appointed and shall have no power to act otherwise. Upon completion of the task for which it is appointed, such special committee shall stand discharged.

Article IX - Administration

9.1 Chief Executive Officer

- A. The Corporate Members, upon the recommendation of the Board of Trustees shall appoint a Chief Executive Officer. The Chief Executive Officer shall be the representative of the Board of Trustees in the management of the Corporation. The Chief Executive Officer shall carry out the duties described in this Article. The Chief Executive Officer shall be given the necessary authority and responsibility to operate the Corporation in all its activities and departments, subject only to such policy limitations as may be established by the Board of Trustees. The Chief Executive Officer shall act as the duly authorized representative of the Board of Trustees in all matters in which the Board of Trustees has not formally designated some other person to so act. The Chief Executive Officer shall be evaluated by the Board of Trustees annually.

- B. Qualifications. The Chief Executive Officer shall be qualified by education and experience appropriate to the proper discharge of these responsibilities.
- C. Duties. The authority and responsibility of the Chief Executive Officer shall include the following duties:
 1. to be continuously responsible for the management of the Corporation, commensurate with the authority conferred by the Board of Trustees and consonant with its expressed aims and policies.
 2. to designate an individual to act in the absence of the Chief Executive Officer in order to provide the Corporation with administrative direction at all times.
 3. to organize the administrative functions of the Corporation, delegate duties and establish formal means of accountability on the part of subordinates.
 4. to establish such Corporate departments as are indicated, to designate such department heads, provide for departmental and interdepartmental meetings and attend, or be represented at, such meetings.
 5. to attend all meetings of the Board of Trustees, Committees to which the Chief Executive Officer is assigned and appropriate meetings of the Medical Staff.
 6. to make or send reports to the Board of Trustees and to the Medical Staff:
 - a. on the overall activities of the Corporation,
 - b. on appropriate federal, state and local developments that affect health care in the Corporation's facilities; and
 - c. such other reports as may be requested by the Board of Trustees.
 7. to be responsible for the application and implementation of established policies in the operation of the Corporation.
 8. to be responsible for providing liaison among the Board of Trustees, the Medical Staff and the departments of the Corporation.
 9. to be responsible for naming Medical Center departmental representatives to Medical Staff committees, where appropriate and when requested by the Medical Staff.
 10. to be responsible for the maintenance and insurance of corporate property.

9.2 Other Administrative Officers

The Chief Executive Officer shall appoint such other Administrative Officers, with such titles that she deems appropriate, that she determines are required in order to assist the Chief Executive Officer perform the duties set out in these Bylaws. The Chief Executive Officer shall notify the Board of Trustees of the names and responsibilities of the individual that she appoints to the Administrative Offices.

Article X - Medical Staff

10.1 Organization

The Board of Trustees shall cause to be created a Medical Staff organization, to be known as the Medical Staff of St. Elizabeth Medical Center, whose membership shall be comprised of all practitioners who are privileged to attend patients in the Medical Center. Membership in this Medical Staff organization shall be a prerequisite to the exercise of clinical privileges in the Medical Center, except as otherwise specifically provided in the Medical Staff Bylaws.

10.2 Medical Staff Bylaws, Rules and Regulations

A. Purpose

The Medical Staff organization shall propose and adopt by vote bylaws, rules and regulations for its internal governance, which shall be effective when approved by the Board of Trustees. These bylaws shall create an effective administrative unit to discharge

the functions and responsibilities assigned to the Medical Staff by the Board of Trustees. The Medical Staff bylaws, rules and regulations shall state the purpose, functions and organization of the Medical Staff and shall set forth the policies by which the Medical Staff exercises and accounts for its delegated authority and responsibilities.

B. Procedure

The Medical Staff shall have the initial responsibility to formulate, adopt, and recommend to the Board of Trustees, Medical Staff bylaws and amendments thereto, which shall be effective when approved by the Board of Trustees. If the Medical Staff fails to exercise this responsibility in good faith and in a reasonable timely and responsible manner, the Board of Trustees may formulate or amend Medical Staff bylaws, at its own initiative. In such event, recommendations and views of the Medical Staff shall be carefully considered by the Board of Trustees during its deliberations and in its actions.

10.3 Medical Staff Membership and Clinical Privileges

A. Duties of the Medical Staff

The Medical Staff shall have the responsibility and authority to investigate and evaluate all matters relating to initial staff appointments, reappointments, the assignment or curtailment of clinical privileges and corrective action. The Board of Trustees shall require the Medical Staff to adopt and forward to it specific written recommendations concerning staff appointments, reappointments, the assignment or curtailment of clinical privileges and corrective action, with appropriate supporting documentation that will allow the Board of Trustees to take informed action.

The Medical Staff shall have the responsibility and authority to investigate and evaluate each allied health professional's application for specified services, department affiliation, and modification in the services such allied health professional may perform, and shall require that the Medical Staff make recommendations to the Board of Trustees on such applications.

The Board of Trustees has overall responsibility for making available high quality patient care. Therefore, the Medical Staff shall conduct an ongoing review and appraisal of the quality of professional care rendered in the Medical Center and shall report such activities and their results to the Board of Trustees.

B. Action by the Board of Trustees

Final action on all matters relating to Medical Staff membership status, clinical privileges and corrective action shall be taken by the Board of Trustees after considering the recommendations of the Medical Staff, provided that the Board of Trustees shall act in any event if the Medical Staff fails to adopt and submit any such recommendation within a reasonable time. Such Board of Trustees action without a Medical Staff recommendation shall be based on the same kind of documented investigation and evaluation as is required for Medical Staff recommendations.

C. Criteria for Board of Trustees' Action

In acting on matters of Medical Staff membership status, the Board of Trustees shall consider the Medical Staff's recommendations, the Medical Center's and the community's needs, and such additional criteria as are set forth in the Medical Staff bylaws. In granting and defining the scope of clinical privileges to be exercised by each practitioner, the Board of Trustees shall consider the Medical Staff's recommendations, the supporting information on which they are based, and such criteria as are set forth in the Medical Staff bylaws. No aspect of membership status or specific clinical privileges shall be limited or denied to a practitioner on the basis of sex, race, age, creed, color or national origin, or on the basis of

any other non-professional qualifications, to the Medical Center's purposes, needs and capabilities, or to community needs.

D. **Conflict Resolution**

In accordance with the Medical Staff's policies and procedures as set out in the Medical Staff Bylaws, the Board of Trustees will resolve any differences in recommendations concerning Medical Staff appointments, reappointments, terminations of appointments and the granting or revision of clinical privileges within a reasonable time.

10.4 Terms and Conditions of Medical Staff Membership and Clinical Privileges

A. The Board of Trustees shall require that the Medical Staff establish controls that are designed to ensure the achievement and maintenance of high standards of professional and ethical practice according to the directives for Catholic health facilities.

B. The Board of Trustees may determine the total numbers and types of practitioners on the medical or affiliate staffs, based on the physical capabilities of the Medical Center, utilization of the Medical Center by its staff members, and requirements for efficient use of Medical Center facilities and personnel.

C. Practitioners applying for Medical Staff membership, or for clinical privileges, must sign an agreement to abide by the Medical Center Bylaws and by the Medical Staff bylaws, rules and regulations.

10.5 Due Process

A. **Practitioners**

In holding the Medical Staff responsible for making recommendations to it, the Board of Trustees shall require that the Medical Staff bylaws shall provide for review of any adverse recommendation made to the Board of Trustees with respect to a practitioner's Medical Staff appointment, reappointment, department affiliation, staff category, admitting prerogatives, clinical privileges or corrective action. The review shall be conducted in accordance with the Board of Trustees-approved Medical Staff Fair Hearing Plan then in effect. Such plan shall provide procedures to assure fair treatment of all practitioners and to afford opportunity for the presentation of all pertinent information, including the right to be heard, when requested by the practitioner.

B. **Medical Staff-Administrative Staff**

Any physician who is also an administrative officer shall be entitled to procedural due process under the Board of Trustees-approved Fair Hearing Plan then in effect. The Medical Staff-administrative officer shall be entitled to hearings by review committees of both the Medical Staff and the Board of Trustees.

C. **Medical Staff**

If the Board of Trustees declines to follow any Medical Staff recommendation concerning Medical Staff appointments, reappointments, the assignment or curtailment of clinical privileges, or corrective action, then the Medical Staff shall be entitled to have the adverse decision of the Board of Trustees reviewed by the Board of Trustees in accordance with the Board of Trustees-approved Fair Hearing Plan then in effect.

10.6 Methods for Medical Administrative Liaison

The Board of Trustees shall establish medical-administrative liaison by the following methods:

A. Appointment of Trustees to attend Executive Committee meetings of the Medical Staff

B. Appointment of members of the Medical Staff to Committees of the Board of Trustees.

10.7 Officers and Chairpersons

All elections and appointments of Medical Staff officers or chairpersons of Medical Staff committees shall be approved by the Board of Trustees after consideration of the recommendation of the President of the Medical Staff. The duties and responsibilities of such officers and committee chairpersons shall be set forth in the Medical Staff bylaws.

Article XI - Guild

- 11.1** The Board of Trustees shall establish "The Guild of St. Elizabeth Medical Center," which shall be organized into a responsible administrative unit. The Guild shall adopt such bylaws, rules and regulations for their governance as the Medical Center's Board of Trustees deems to be of greatest benefit to the Corporation.

At its annual meeting, the Board of Trustees shall review and approve any changes that are proposed for the purpose and function of the Guild of St. Elizabeth Medical Center and all other volunteers and/or auxiliary organizations of the Medical Center.

Article XII – Indemnification

- 12.1** It is expressly provided that any and every person, or his or her estate, that is made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal, by reason of the fact that he or she is or was a Trustee or Officer of this Corporation, or served such other Corporation in any capacity at the request of this Corporation, will be completely indemnified by this Corporation to the full extent permitted by law. If permitted by law, this indemnification shall include, but not be limited to, the payment of the following: judgments, fines, amounts paid in settlement, and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action, suit or proceeding, or any appeals therein. This Corporation may purchase and maintain insurance to completely and fully indemnify such person or his or her estate, whether or not this Corporation has the power to directly indemnify him or her against such liability under the laws of this or any other State. The indemnification set out in this Article shall not be limited to those circumstances where insurance coverage is or may be purchased by the Corporation.

Article XIII – Dissolution

- 13.1** Upon the Corporate Members' approval of the plan of dissolution and disposition of the assets of the Corporation, the Board of Trustees, shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation to the Congregation of the Sisters of St. Francis of the Neumann Communities. If the Congregation of the Sisters of St. Francis of the Neumann Communities is not in existence, the Board of Trustees shall dispose of all of the asset of the Corporation to such organization(s) organized and operated exclusively for charitable, education, religious or scientific purposes as shall at the time qualify as an exempt organization 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), as the Board of Trustees shall determine.

Article XIV - Amendments

- 14.1** The Bylaws of this corporation may be amended, modified or repealed by affirmative vote of the Corporate Members present at the annual meeting or any special meeting of the Corporate Members, provided that a full presentation of such proposed amendments shall have been published in the notice calling the meeting.

RESOLUTION
OF
THE BOARD OF TRUSTEES
OF
ST. ELIZABETH MEDICAL CENTER
Participation in Mohawk Valley EC, LLC

September 20, 2010

WHEREAS, St. Elizabeth Medical Center ("Corporation") is a New York State not-for-profit corporation licensed under Article 28 of the New York State Public Health Law; and

WHEREAS, the Board of Trustees is aware that Digestive Disease Medicine of Central New York ("DDM") has been in the process of establishing a physician-owned single specialty Ambulatory Surgery Center to be operated in the Utica area; and

WHEREAS, the Board of Trustees has been advised that at its August 31, 2010 meeting the Establishment Committee of the Public Health Council expressed its desire to see a state-of-the-art free-standing outpatient endoscopy center in the Utica area and directed that such a center should ensure a collaborative, community-wide approach to the free-standing Center; and

WHEREAS, the Board of Trustees has been involved in discussions and meetings regarding an Ambulatory Surgery Center, the impact upon the community and the Medical Center and has considered recommendations from the Medical Center administrators and legal counsel; and

WHEREAS, the Board has determined that being involved in a joint venture with DDM and Faxton-St. Luke's Healthcare would provide a collaborative, community-wide approach to endoscopy services and would be in the best interests of the community and the Medical Center; and

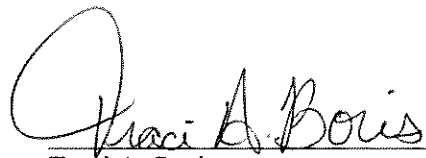
WHEREAS, this Resolution is being considered by the Board of Trustees of the Corporation at a duly called meeting at which a quorum is present,

NOW THEREFORE, IT IS

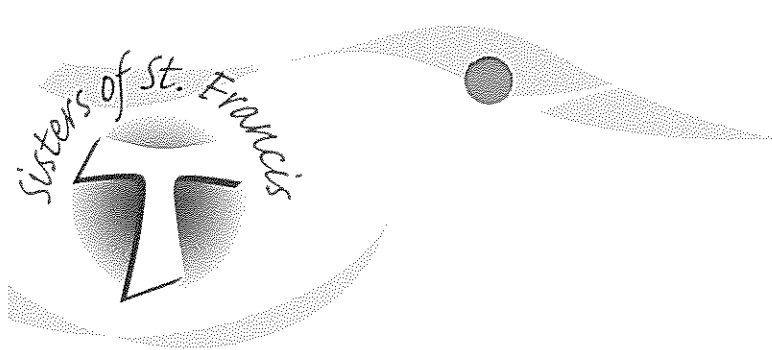
RESOLVED, that upon approval by the Corporate Member of St. Elizabeth Medical Center, that Medical Center staff, under the direction and oversight of the President and Chief Executive Officer, take such action as necessary to complete an agreement that would include the Medical Center as an owner in a joint venture with Faxton-St. Luke's Healthcare and the physician partners of DDM. The joint venture would be a single-specialty endoscopy ASC wherein ownership would be 20% by St. Elizabeth Medical Center, 20% by Faxton-St. Luke's Healthcare and 60% by the DDM physicians collectively; and be it

FURTHER RESOLVED, that the Chair of the Board of Trustees, the President and Chief Executive Officer and other officers of the Corporation are hereby authorized and directed to take such actions as may be necessary or appropriate to implement the foregoing Resolutions.

Dated: September 20, 2010



Traci A. Boris
Secretary



Sisters of St. Francis
of the Neumann Communities

Congregation Offices

2500 Grant Boulevard • Suite 3 • Syracuse, NY 13208

Phone 315.634.7000 • Fax 315.634.7023

www.sosf.org

September 20, 2010

Traci A. Boris, Esq.
General Counsel
St. Elizabeth Medical Center
2209 Genesee Street
Utica, NY 13501

Dear Ms. Boris:

The Corporate Member of the St. Elizabeth Medical Center held a special meeting on September 20, 2010 at which a quorum was present.

Pursuant to the Reserved Powers of the corporate bylaws in Section 4G (purchase of capital assets) and 4H (affiliation of the corporation with another corporation), the following resolution upon recommendation by the Board of Trustees was unanimously approved:

That St. Elizabeth Medical Center under the direction and oversight of the President and Chief Executive Officer, take such action as necessary to complete an agreement that would include the Medical Center as an owner in a joint venture with Faxton-St. Luke's Healthcare and the physician partners of DDM and in which St. Elizabeth would have a 20% ownership.

If you need further information, please do not hesitate to contact me.

Sincerely,


Sister Roberta Smith
Secretary

Women of Vision

TRANSFER AGREEMENT

THIS AGREEMENT is entered into October 15, 2010 and between **ST. ELIZABETH MEDICAL CENTER**, with its principal office located at 2209 Genesee Street, Utica, New York 13501 (the "Hospital"), and **MOHAWK VALLEY EC, LLC**, with offices located at 116 Business Park Drive, Utica, New York 13502 (the "Facility").

RECITALS:

- A. The Hospital is a Medicare participating hospital capable of providing acute emergency medical care.
- B. The Facility is an Article 28-licensed ambulatory surgery center.
- C. The Hospital and the Facility desire to cooperate in order to assure continuity of care and treatment appropriate to the needs of each patient should a patient, while in the care of the Facility, need urgent or emergent services beyond the capabilities of the Facility.

NOW, THEREFORE, the parties hereby agree as follows:

1. Should the Facility determine that a patient in its care is in need of emergency or urgent medical care beyond the Facility's scope and capabilities and that transfer to a hospital is appropriate, the Hospital agrees to accept the transfer of the patient and to provide emergency and/or urgent medical care through its Emergency Department pursuant to the Hospital's normal policies and procedures and subject to this Agreement.
2. The Facility shall arrange for transportation of the patient to the Hospital. The Facility shall ensure that the method of physically transporting the patient is safe and medically approved by the responsible physician. The Hospital will accept responsibility for the patient upon arrival at the Hospital. Whenever a patient is transferred, the Facility shall undertake its best efforts to see that any and all personal property and any and all medical, clinical, admission, transfer and discharge information about the patient is transferred with the patient to the Hospital or provided shortly after the patient's arrival. Hospital shall arrange for all personal property so transferred to be stored safely in a place known and reasonably accessible to the patient or to a person or agency legally authorized to act in the patient's behalf.
3. Intake of the patients shall occur through the Hospital's Emergency Department, which shall be responsible for coordinating any and all other services offered by the Hospital as may be ordered for the patient.
4. Treatment of such transferred patient shall be determined by the Hospital's Emergency Department physician, who shall be a member of the Hospital's medical staff. The Emergency Department physician may, in his or her sole discretion, collaborate with the medical staff at the Facility to the degree appropriate for continuity, efficiency, economy and quality of care purposes and subject to the consent of the patient. Notwithstanding the foregoing, the parties acknowledge and agree that upon arrival at the Hospital's Emergency Department, the Emergency Department physician shall have sole authority with regard to the patient's care.
5. The Hospital meets the qualifications to accept transfers from the Facility set forth in 10 NYCRR 755.2(a) and 42 CFR 416.41.

6. Neither Hospital nor Facility shall be responsible for payment for care rendered by the Hospital or any individual physician to patients transferred from the Facility. Payment for care of patients transferred from the Facility shall be the sole responsibility of the patient and/or patient's third party payer. Notwithstanding the foregoing, patients transferred from the Facility shall be seen and treated without regard to their ability to pay.
7. Nothing in this Agreement is intended, nor should it be construed, as limiting the rights of either party to contract with any third party for the same or similar services.
8. Hospital and Facility shall each maintain a written copy of this Agreement in the appropriate administrator's office to be made available to the Department of Health upon request.
9. This Agreement shall commence on the date that the Facility begins commercial operations and shall be in effect for a period of 12 months thereafter. Thereafter, it shall automatically renew for an unlimited number of additional one-year terms, unless either party provides the other with written notice at least 30 days prior to the expiration of any one-year term that it does not consent to the automatic renewal. Notwithstanding the foregoing, this Agreement may be terminated at any time, with or without cause, by either party upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ST. ELIZABETH MEDICAL CENTER

By: *Richard Kleban*
Title: *President & CEO*

MOHAWK VALLEY EC, LLC

By: MVEC Holdings, LLC,
Managing Member

By: _____
Member

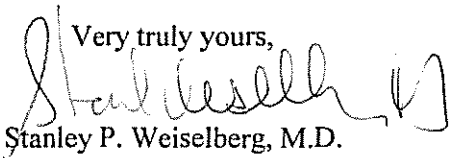
November 10, 2009

Mohawk Valley EC, LLC

Gentlemen:

This letter will confirm that I plan to perform approximately 375 upper endoscopy type procedures and 500 colonoscopy type procedures at the ambulatory surgery center to be developed by you and located at 116 Business Park Drive, Utica, New York.

Very truly yours,


Stanley P. Weiselberg, M.D.

Mohawk Valley EC, LLC

Gentlemen:

This letter will confirm that I plan to perform approximately 350 upper endoscopy type procedures and 500 colonoscopy type procedures at the ambulatory surgery center to be developed by you and located at 116 Business Park Drive, Utica, New York.

Very truly yours,

A handwritten signature in black ink, appearing to read "Norman R. Neslin".

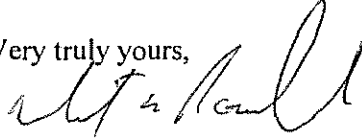
Norman R. Neslin, M.D.

Mohawk Valley EC, LLC

Gentlemen:

This letter will confirm that I plan to perform approximately 375 upper endoscopy type procedures and 500 colonoscopy type procedures at the ambulatory surgery center to be developed by you and located at 116 Business Park Drive, Utica, New York.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Pavelock", written in a cursive style.

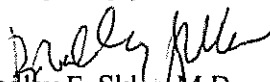
Robert R. Pavelock, M.D.

Mohawk Valley EC, LLC

Gentlemen:

This letter will confirm that I plan to perform approximately 375 upper endoscopy type procedures and 500 colonoscopy type procedures at the ambulatory surgery center to be developed by you and located at 116 Business Park Drive, Utica, New York.

Very truly yours,


Bradley F. Sklar, M.D.

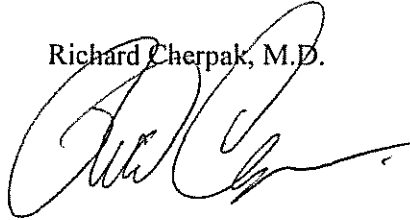
Mohawk Valley EC, LLC

Gentlemen:

This letter will confirm that I plan to perform approximately 375 upper endoscopy type procedures and 500 colonoscopy type procedures at the ambulatory surgery center to be developed by you and located at 116 Business Park Drive, Utica, New York.

Very truly yours,

Richard Cherpak, M.D.

A handwritten signature in black ink, appearing to read 'Richard Cherpak', with a long horizontal flourish extending to the right.

Mohawk Valley EC, LLC

Gentlemen:

This letter will confirm that I plan to perform approximately 375 upper endoscopy type procedures and 500 colonoscopy type procedures at the ambulatory surgery center to be developed by you and located at 116 Business Park Drive, Utica, New York.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. Gandhi", written over a horizontal line.

Brett Gandhi, M.D.

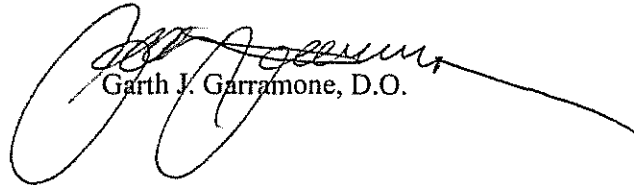
November 10, 2009

Mohawk Valley EC, LLC

Gentlemen:

This letter will confirm that I plan to perform approximately 375 upper endoscopy type procedures and 500 colonoscopy type procedures at the ambulatory surgery center to be developed by you and located at 116 Business Park Drive, Utica, New York.

Very truly yours,



Garth J. Garramone, D.O.

Interest, Rent and Depreciation Expense

Interest

MVEC plans to obtain bank loans to finance part of the equipment purchase for the new surgery center as well as the facility improvements.

The bank loan for the equipment is expected to be a seven-year loan for \$500,000 at an interest rate of 5.99%. Interest by year for the first three years is as follows:

Year 1	\$ 28,340
Year 2	\$ 24,690
Year 3	\$ 20,815

The loan for facility improvements is expected to be a ten year loan amortized over 15 years for \$1,810,972 at an interest rate of 6.0%. MVEC will borrow \$452,743 on January 1, 2011, an additional \$452,743 on April 1, 2011, an additional \$452,743 on July 1, 2011, and the final \$452,743 on October 1, 2011. Interest by year for the first three years is as follows:

Year 1	\$ 58,857
Year 2	\$106,920
Year 3	\$102,237

Rent

MVEC has signed a lease for space at 110 Business Park Drive, Utica, New York 13502 that has the following rent expense by year:

Years 1 through 10:	\$ 278,124
---------------------	------------

Depreciation

MVEC will fund facility improvements as well as acquire equipment and furnishings at project inception that will be depreciated. Both expenses will be depreciated on a straight-line basis, the improvements over 15 years and the equipment over seven years.

	<u>Expense</u>	<u>Depreciation Period</u>	<u>Annual Depreciation</u>
Facility Improvements	\$ 1,732,750	15	\$ 115,517
Moveable Equipment	\$ 500,000	7	\$ 71,429

Mohawk Valley Endoscopy Center
Monthly Revenues, Expenditures and Cash Flow for Year 1

	Month of Operation												YEAR 1 TOTAL	
	1	2	3	4	5	6	7	8	9	10	11	12		
TOTAL PATIENT REVENUE	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 3,377,834
EXPENSE														
1. Salaries & Wages	\$ 77,083	\$ 77,083	\$ 77,083	\$ 77,083	\$ 77,083	\$ 77,083	\$ 77,083	\$ 77,083	\$ 77,083	\$ 77,083	\$ 77,083	\$ 77,083	\$ 77,083	\$ 925,000
2. Employee Benefits	\$ 19,271	\$ 19,271	\$ 19,271	\$ 19,271	\$ 19,271	\$ 19,271	\$ 19,271	\$ 19,271	\$ 19,271	\$ 19,271	\$ 19,271	\$ 19,271	\$ 19,271	\$ 231,250
3. Professional Fees	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 90,000
4. Medical & Surgical Supplies	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 192,000
5. Non-medical & Non-surgical Supplies	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 20,000
6. Utilities	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 58,000
7. Purchased Services	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 24,000
8. Other Direct Expenses	\$ 12,667	\$ 12,667	\$ 12,667	\$ 12,667	\$ 12,667	\$ 12,667	\$ 12,667	\$ 12,667	\$ 12,667	\$ 12,667	\$ 12,667	\$ 12,667	\$ 12,667	\$ 152,000
10. Interest	\$ 10,438	\$ 10,438	\$ 10,438	\$ 10,438	\$ 10,438	\$ 10,438	\$ 10,438	\$ 10,438	\$ 10,438	\$ 10,438	\$ 10,438	\$ 10,438	\$ 10,438	\$ 125,261
11. Depreciation	\$ 5,952	\$ 5,952	\$ 5,952	\$ 5,952	\$ 5,952	\$ 5,952	\$ 5,952	\$ 5,952	\$ 5,952	\$ 5,952	\$ 5,952	\$ 5,952	\$ 5,952	\$ 71,429
12. Rent	\$ 23,177	\$ 23,177	\$ 23,177	\$ 23,177	\$ 23,177	\$ 23,177	\$ 23,177	\$ 23,177	\$ 23,177	\$ 23,177	\$ 23,177	\$ 23,177	\$ 23,177	\$ 278,124
TOTAL EXPENSES	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 2,167,064
SUMMARY OF REVENUE AND EXPENSES														
Total Revenue	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 3,377,834
Total Expenses	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 180,589	\$ 2,167,064
Surplus / (Loss)	\$ 100,897	\$ 100,897	\$ 100,897	\$ 100,897	\$ 100,897	\$ 100,897	\$ 100,897	\$ 100,897	\$ 100,897	\$ 100,897	\$ 100,897	\$ 100,897	\$ 100,897	\$ 1,210,770
MONTHLY CASH FLOW ANALYSIS														
Sources of Cash														
Initial Equity & Working Capital Loan	\$ 1,031,119													
Addition to Accounts Receivable	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486
Collections on A/R	\$ 42,223	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486
Net A/R monthly balance	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263	\$ 239,263
TOTAL SOURCES	\$ 1,073,342	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486	\$ 281,486
Uses of Cash														
Addition to Accts Payable	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636
Payments on A/P	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636
Net A/P monthly balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL USES	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636	\$ 174,636
SOURCES MINUS USES	\$ 898,706	\$ 106,850	\$ 106,850	\$ 106,850	\$ 106,850	\$ 106,850	\$ 106,850	\$ 106,850	\$ 106,850	\$ 106,850	\$ 106,850	\$ 106,850	\$ 106,850	\$ 106,850
ENDING CASH BALANCE	\$ 898,706	\$ 1,005,556	\$ 1,112,406	\$ 1,219,256	\$ 1,326,106	\$ 1,432,955	\$ 1,539,805	\$ 1,646,655	\$ 1,753,505	\$ 1,860,355	\$ 1,967,205	\$ 2,074,055	\$ 2,074,055	\$ 2,074,055

Mohawk Valley Endoscopy Center

Utilization by Payor

	Year One 2011/12	Year Two 2012/13	Year Three 2013/14
Revenue / Visit			
Commercial / Fee for Service	\$ 700	\$ 700	\$ 700
Commercial / Managed Care	\$ 650	\$ 650	\$ 650
Medicare	\$ 359	\$ 359	\$ 359
Medicaid / Fee-for-Service	\$ 556	\$ 564	\$ 564
Medicaid Managed Care	\$ 547	\$ 547	\$ 547
Private Pay	\$ 800	\$ 800	\$ 800
Charity Care	\$ 179	\$ 179	\$ 179
Payor Mix			
Commercial / Fee for Service	2%	2%	2%
Commercial / Managed Care	64.9%	64.9%	64.9%
Medicare	25%	25%	25%
Medicaid / Fee-for-Service	2.0%	2.0%	2.0%
Medicaid Managed Care	4.0%	4.0%	4.0%
Private Pay	0.1%	0.1%	0.1%
Charity Care	2%	2%	2%
Visit Volume by Payor			
Commercial / Fee for Service	120	132	145
Commercial / Managed Care	3,894	4,283	4,712
Medicare	1,500	1,650	1,815
Medicaid / Fee-for-Service	120	132	145
Medicaid Managed Care	240	264	290
Private Pay	6	7	7
Charity Care	120	132	145
TOTAL	6,000	6,600	7,260
Total Revenue by Payor			
Commercial / Fee for Service	\$ 84,000	\$ 92,400	\$ 101,500
Commercial / Managed Care	\$ 2,531,100	\$ 2,783,950	\$ 3,062,800
Medicare	\$ 538,362	\$ 592,198	\$ 651,418
Medicaid / Fee-for-Service	\$ 66,757	\$ 74,421	\$ 81,750
Medicaid Managed Care	\$ 131,280	\$ 144,408	\$ 158,630
Private Pay	\$ 4,800	\$ 5,600	\$ 5,600
Charity Care	\$ 21,534	\$ 23,688	\$ 26,021
TOTAL	\$ 3,377,834	\$ 3,716,665	\$4,087,719
<i>average revenue per visit</i>	\$ 563	\$ 563	\$ 563

Reimbursement Rate Assumptions

Commercial Insurance (inc. HMO and PPO)

Based upon estimates of local commercial insurer payments.

Medicare

Based upon Medicare ambulatory surgery group payments for the region.

Medicaid

Based upon Medicaid APG blended rates.

Self-Pay

Based upon historical experience of the program.

ATTACHMENT A

ARCHITECTURE



Mohawk Valley E.C., L.L.C.

Specialty: Endoscopy

		Qty	Length	Width	Typ SF	Total SF	Notes
Reception	Elevator Lobby	1	10	33		330	Provide access to drinking water and telephone
	Waiting	1	17	20		328	Provide access to drinking water and telephone
	Reception	1	7	20		140	
	Wheelchair Storage	1	4	6		21	
	Female Toilet	1	6	13		81	
	Male Toilet	1	8	7		53	
	Café	1	23	31		713	
Clinical Areas	Exam Room	1	10	14		140	Provide min clear area of 80 sq ft with at least 2 foot 8 inches at side & foot of table, handwashing sink, counter and writing shelf
	Clean Storage	1	7	13		96	
	Soiled Holding	1	9	12		108	
	Procedure Rooms	4	12	20	248	992	Provide min clear area of 200 sq ft, oxygen, vacuum, suction, monolithic floor, emergency communication & acoustical privacy
	Clean Room	1	14	9		126	
	Decontam Room	1	17	10		170	Provide utility sink, freestanding handwash sink, work counter, endoscope cleaners, ventilation, vacuum/ air & monolithic flooring
	Medgas Storage	1	6	12		72	
	Prep Nurse	1	9	14		126	
	Prep Area	6	7	10	70	420	Provide handwashing sink, oxygen & suction
	Recovery Area	14	6	10	60	840	Provide handwashing sink, oxygen & suction
	Meds	1	7	13		90	Provide handwashing sink & meds storage
	Nourishment	1	2	12		26	Provide sink, counter and fridge
	Patient Toilet Rooms	2	6	7	42	84	
	Nurse Station	1	11	12		138	
	Janitor Closet	1	4	10		38	
	Supply Storage	1	13	20		250	
Staff Lounge & Dictation	1	17	20		332		
Staff Areas	Staff Lounge	1	16	23		363	Serves as multi-purpose room
	Staff Closet	1	2	8		16	
	Female Locker Room	1	8	11		88	
	Male Locker Room	1	8	13		104	
	Staff Toilet	2	6	7	42	84	
	Staff Shower Room	1	5	11		55	
	Consult Rooms	5	10	14	140	700	
	Library/ Conference	1	28	20		560	
	Vacuum	1	10	10		100	
	Data/ Elec	1	10	8		75	
	Storage	1	5	8		40	
Total Net Area						7,900	nsf
Circulation, Walls, etc						3,536	usf
Total						11,436	sq ft

187 East Market Street
Suite 180
Rhinebeck NY 12572

845 876 8202
845 876 8112 fax
optimusarchitecture.com



ARCHITECTURAL NARRATIVE

PROJECT NUMBER: Not Assigned.
Mohawk Valley E.C., L.L.C., Utica, NY.

INTRODUCTION

Mohawk Valley E.C., L.L.C. is requesting approval for a single-specialty ambulatory surgery center to perform endoscopy services.

Location

Mohawk Valley E.C., L.L.C. is to be located at 116 Business Park Drive in Utica, New York.

Purpose/Need

Mohawk Valley E.C., L.L.C. will improve access to endoscopy procedures by expanding capacity within the region. This will reduce the current patient backlog and accommodate anticipated future need. This will also assist in the recruitment and retention of trained gastroenterologists by offering them an opportunity to participate in an Ambulatory Surgery Center, which will further improve patient access to endoscopy procedures.

Existing Program Inventory

This project will establish new construction for a single specialty Ambulatory Surgery Center endoscopy procedure suite within an existing building. At this time there is no existing program inventory.

Program Inventory at Project Completion

Upon completion of this project the new facility will consist of four procedure rooms, 6 prep bays and 16 recovery bays. The facility will also house support services for these functions.

Existing Building Inventory

The project will consist of a new interior fit-up of 11,436 square feet located on the second floor of an existing office building. The second floor of this two story building will be vacated and converted via a complete renovation into a new Article 28 single-specialty Ambulatory Surgery Center, applying AIA Guidelines 2001 edition, Chapter 9 Out-patient Facilities, 9.9 Endoscopy Suite.

Building Inventory at Project Completion

The first floor will contain other tenants. The first floor will be separated in

187 East Market Street
Suite 180
Rhinebeck NY 12572

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845 876 8112 fax
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accordance with NFPA 101 with a one hour rated assemblies. The second floor will contain the Ambulatory Surgery Center. Please see the Functional Space Program.

PROJECT DESCRIPTION

The new 11,436 square foot endoscopy procedure space will be divided into two smoke compartments. One compartment will contain the clinical areas including procedure rooms, prep and recovery bays and associated support spaces. The second smoke compartment will house non-clinical areas, including staff areas, waiting room, and consult spaces.

The non-clinical area consists of the waiting room, staff and doctor lounges and lockers. The waiting room will have an area for coats and wheelchair storage, as well as access to DDM phone and drinking water.

The clinical area will consist of four procedure rooms with a clear floor space of no less than 200 square feet. There will be access to a clean processing room and a decontamination room, clean storage, soiled holding room, medical gas and a janitor closet. Each patient bay will be provided with oxygen and suction and be monitored by staff at nurse stations.

CONCLUSION

The Mohawk Valley E. C., L.C.C. project will respond to the increased local demand for endoscopy procedures. It will improve access to endoscopy procedures by expanding capacity in the region. It will reduce the current patient backlog and accommodate anticipated future need. It will also assist in the recruitment and retention of trained gastroenterologists by offering them an opportunity to participate in an Ambulatory Surgery Center, which will further improve patient access to endoscopy procedures.

187 East Market Street
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Rhinebeck NY 12572

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optimusarchitecture.com



October 30, 2009

NYS Department of Health/Office of Health Systems Management
Division of Health Care Planning and Resource Management
Bureau of Architectural and Engineering Review
433 River Street, Suite 303
Troy, NY 12180-2299


Re: Project Number: Not Assigned
Name: Mohawk Valley E.C, L.L.C.
Location: 116 Business Park Drive, Utica, NY 13502
Description: Establish and construct a freestanding single-specialty Ambulatory Surgery Center for endoscopy procedures to be located on the second floor of an existing multiple tenant office building.

Gentlemen:

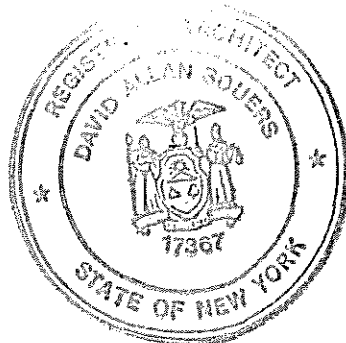
This is to certify that under the terms of my contract for the above-named facility to provide services to design, prepare working drawings and specifications, and during construction to make periodic visits to the site and to perform such other required services to familiarize myself with the general progress, quality and conformance of the work, I have ascertained that to the best of my knowledge, information and belief, this project will be designed in substantial compliance with the provisions of the construction sections of the State Hospital Code, which are in effect at the time this application is being submitted.

I also certify that I have read and understood the conditions of Section 710.1 of 10 NYCRR.

11.6.09
Date


David A. Souers, AIA, ASHE, ACHA

Professional NYS License No. 017367-1



Attachment A

MOHAWK VALLEY EC, L.L.C.

BUILDING SQUARE FOOTAGE STATEMENT

The Ambulatory Surgery Center (ASC) will use 11,436 square feet on the second floor of a two-story building. The total square feet of the building is 26,003 square feet. The ASC will be the only second floor tenant.

ATTACHMENT B

**ST. ELIZABETH MEDICAL CENTER
Corporate Documents**

ST. ELIZABETH MEDICAL CENTER

Sisters of St. Francis of the Neumann Communities – sole corporate member



Board of Trustees June 2010 to May 2011

Name/Address	
Hon. Norman I. Siegel, Chairman New York State Court of Claims State Office Building 207 Genesee Street Utica, NY 13501	Mr. Richard H. Ketcham, FACHE St. Elizabeth Medical Center 2209 Genesee Street Utica, NY 13501
Ms. Catherine Cominsky [REDACTED]	Sister Donna McGartland Sisters of St Francis of the Neumann Communities 2500 Grant Blvd, Suite 3 Syracuse, NY 13208-1797
Mr. Gregory P. Evans Indium Corporation of America 34 Robinson Road Clinton, NY 13323	Mr. Raymond Meier, Esq. Bond, Schoeneck & King, PLLC 501 Main Street Utica, NY 13501
Ms. Marianne W. Gaige Cathedral Corporation Griffiss Technology Park 632 Ellsworth Road Rome, NY 13440	Fred Talarico, M.D. 2115 Genesee Street Utica, NY 13501
Mr. Harrison J. Hummel, III Hummel's Office Plus 25 Canal Street Mohawk, NY 13407	Steven Williams, M.D. Mohawk Valley Retina 83 Genesee Street New Hartford, NY 13413
Mr. Fred Matt F.X. Matt Brewing Company 811 Edward Street Utica, NY 13502-4092	Eric Yoss, M.D. [REDACTED]
	Mr. Richard F. Zweifel Gruver, Zweifel & Scott, LLP 7936 Seneca Turnpike Clinton, NY 13323

RESTATED CERTIFICATE OF INCORPORATION
OF
ST. ELIZABETH MEDICAL CENTER

UNDER SECTION 805 OF THE NOT-FOR-PROFIT CORPORATION LAW

030820000

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SERVICE

The undersigned, President of St. Elizabeth Medical Center, certifies:

1. The name of the corporation is St. Elizabeth Medical Center. The corporation was originally formed under the name of The Saint Elizabeth's Hospital and Home.

2. The Certificate of Incorporation of the corporation was filed with the Department of State on February 8, 1870. The corporation was formed under C. 319 of the Laws of 1848.

3. The Restated Certificate of Incorporation restates the text of the Certificate of Incorporation without making any amendment or change. The Restated Certificate of Incorporation is to read as follows:

(1) The name of the corporation is St. Elizabeth Medical Center. The corporation was originally formed under the name of The Saint Elizabeth's Hospital and Home.

(2) The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law. The corporation is a Type B corporation under Section 201 (purposes) of the Not-For-Profit Corporation Law.

(3) The Secretary of State is designated as agent upon whom process may be served, and the post office address within the State to which the Secretary of State shall mail a copy of any process is: 2209 Genesee Street, Utica, NY 13501.

(4) The business and objects of the corporation hereby formed shall be:

(a) to maintain a hospital for poor, sick, aged, infirm and disabled persons; and

(b) to operate a certified home health agency and to otherwise provide home care services.

(5) Pursuant to the establishment of the Mohawk Valley Heart Institute, Inc. pursuant to Article 28 of the Public Health Law, St. Elizabeth Medical Center hereby delegates to the Mohawk Valley Heart Institute, Inc.:

(a) Joint operational decision making authority and responsibility with St. Elizabeth Medical Center over such services for which a joint operating certificate will be issued by the New York State Department of Health to Mohawk Valley Heart Institute, Inc. and St. Elizabeth Medical Center.

- (b) Notwithstanding the foregoing, St. Elizabeth Medical Center retains control over and does not delegate to Mohawk Valley Heart Institute, Inc., authority and responsibility for all other services, operations, and clinical programs, for which no authority has been delegated to Mohawk Valley Heart Institute, Inc. and for which no joint operating certificate will be issued by the New York State Department of Health.
 - (6) The member of St. Elizabeth Medical Center shall be the Superior General and Councillors of the Sisters of the Third Franciscan Order, Syracuse, New York.
 - (7) The following powers shall be exercised by the membership:
 - (a) Approve any merger, consolidation or dissolution or the sale of all or substantially all of the assets.
 - (b) Approve the election of members of the Board of Trustees.
 - (c) Remove trustees, with or without cause.
 - (d) Approve amendments of the certificate of incorporation and bylaws.
 - (e) Approve the gift, sale, lease or other encumbrance of real property whether owned or leased, or of other assets of the corporation in excess of \$3 million.
 - (f) Establish the mission and philosophy of St. Elizabeth Medical Center.
 - (g) Elect or remove corporate officers.
 - (8) The business of St. Elizabeth Medical Center shall be managed by a Board of Trustees consisting of not fewer than nine nor more than fifteen persons.
 - (9) Any action required or permitted to be taken by the Board of Trustees of St. Elizabeth Medical Center, 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. The resolution and the written consents thereto by the members of the board or committee shall be filed with the minutes of the proceedings of the board or committee.
 - (10) Any one or more members of the board or any committee thereof may participate in the meeting of such board or 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.
4. The corporate purposes are not being enlarged, limited or otherwise changed.

5. This Restated Certificate of Incorporation was authorized by unanimous vote of the Board of Trustees of the corporation at a meeting held on July 9, 2003 at which a quorum was present and acting throughout.

IN WITNESS WHEREOF, the undersigned has executed this Restated Certificate this 12 day of August, 2003. The undersigned affirms that statements made herein are true under the penalties of perjury.

Sister Rose Vincent
Sister Rose Vincent, President

Sworn to before me this 12th day
of August, 2003

Margaret H. Jacobsen
Notary Public

MARGARET H. JACOBSEN
Notary Public, State of New York
Appointed in Oneida County
My Commission Expires 2/18/12

F060823000064

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

ST. ELIZABETH MEDICAL CENTER

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

SERVICO 35

The undersigned, President of St. Elizabeth Medical Center, certifies:

1. The name of the corporation is St. Elizabeth Medical Center. The corporation was originally formed under the name of The Saint Elizabeth's Hospital and Home.

2. The Certificate of Incorporation of the corporation was filed with the Department of State on February 8, 1870. The corporation was formed under C. 319 of the Laws of 1848.

3. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law. The corporation is a Type B corporation under Section 201 (purposes) of the Not-For-Profit Corporation Law.

4. The corporation's Certificate of Incorporation is hereby amended as follows:

a. To amend the members of the corporation in paragraph 6 to read as follows:

(6) The members of St. Elizabeth Medical Center shall be the General Minister and the Councillors of the Sisters of St. Francis of the Neumann Communities.

b. paragraph (7) of the Certificate of Incorporation reads as follows:

(7) The following powers shall be exercised by the membership:

(a) Approve any merger, consolidation or dissolution or the sale of all or substantially all of the assets.

(b) Approve the election of members of the Board of Trustees.

(c) Remove trustees, with or without cause.

(d) Approve amendments of the certificate of incorporation and bylaws.

(e) Approve the gift, sale, lease or other encumbrance of real property whether owned or leased, or of other assets of the corporation in excess of \$3 million.

|

(f) Establish the mission and philosophy of St. Elizabeth Medical Center.

(g) Elect or remove corporate officers.

d. paragraph (7) is deleted in its entirety and replaced with the following:

(7) The following powers shall be exercised by the membership:

(a) Approve any merger, consolidation or dissolution or the sale of all or substantially all of the assets of the Corporation.

(b) Approve the appointment of members of the Board of Trustees.

(c) Remove Trustees, with or without cause.

(d) Approve amendments of the Certificate of Incorporation and Bylaws.

(e) Approve the gift, sale, lease or other encumbrance of real property whether owned or leased, or of other assets of the Corporation in such limits as are established from time to time by the Holy See.

(f) Approve the mission and philosophy of the Corporation.


(g) Approve the appointment of the corporate officers.

(h) Remove corporate officers with or without cause.

5. This Certificate of Amendment of the Certificate of Incorporation was authorized by unanimous vote of the Corporate Members and the Board of Trustees of the corporation at a joint meeting of the Corporate Members and the Board of Trustees held on May 10, 2006 at which a quorum was present and acting throughout.

6. The Secretary of State is designated as agent upon whom process may be served, and the post office address within the State to which the Secretary of State shall mail a copy of any process is: 2209 Genesee Street, Utica, NY 13501.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of the Certificate of Incorporation this 10th day of May, 2006. The undersigned affirms that statements made herein are true under penalties of perjury.


Sister M. Johanna DeLelys
President

Sworn to before me this 10th day of
May, 2006


Notary Public

MARGARETH H. JACOBSEN
Notary Public, State of New York
Appointed in Oneida County
2/18/2010

2

Handwritten signature
JUL 18 2008

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
ST. ELIZABETH MEDICAL CENTER

CA08-2154
32-08-300UC

JUDGE GROW

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, President of St. Elizabeth Medical Center, certifies:

1. The name of the corporation is St. Elizabeth Medical Center. The corporation was originally formed under the name of The Saint Elizabeth's Hospital and Home.

2. The Certificate of Incorporation of the corporation was filed with the Department of State on February 8, 1870. The corporation was formed under C. 319 of the Laws of 1848.

3. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law. The corporation is a Type B corporation under Section 201 (purposes) of the Not-For-Profit Corporation Law.

4. The corporation's Certificate of Incorporation is hereby amended as follows:

a. Paragraph (7) of the Certificate of Incorporation reads as follows:

(7) The following powers shall be exercised by the membership:

(a) Approve any merger, consolidation or dissolution or the sale of all or substantially all of the assets of the Corporation.

(b) Approve the appointment of members of the Board of Trustees.

(c) Remove Trustees, with or without cause.

(d) Approve amendments of the Certificate of Incorporation and Bylaws.

(e) Approve the gift, sale, lease or other encumbrance of real property whether owned or leased, or of other assets of the Corporation in such limits as are established from time to time by the Holy See.

(f) Approve the mission and philosophy of the Corporation.

(g) Approve the appointment of the corporate officers.

(h) Remove corporate officers with or without cause.

b. Paragraph (7) is deleted in its entirety and replaced with the following:

(7) The following powers shall be reserved to the Corporate Members to exercise and shall be referred to as Reserved Powers:

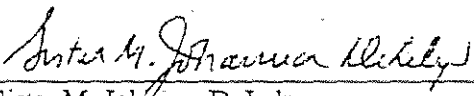
(a) To change the philosophy, mission, and purpose of the Corporation.

- (b) To adopt and/or amend the Certificate of Incorporation.
- (c) To adopt and/or amend the Bylaws.
- (d) To elect the Board of Trustees and to remove Board members with or without cause.
- (e) To appoint the President and the Chief Executive Officer of the Corporation.
- (f) To approve the purchase, sale, lease, mortgage of real property; to approve the purchase, sale, or gift of capital assets.
- (g) To approve the merger, consolidation, or affiliation of the Corporation with another corporation, organization, or program.
- (h) To approve the dissolution of the Corporation and disposition of assets.

5. This Certificate of Amendment of the Certificate of Incorporation was authorized by unanimous vote of the Corporate Members at a meeting of the Corporate Members held on the 29th day of May, 2008 at which a quorum was present and acting throughout and authorized by unanimous vote of the Board of Trustees of the Corporation at a meeting of the Board of Trustees held on the 14th day of May, 2008 at which a quorum was present and acting throughout.


6. The Secretary of State is designated as agent upon whom process may be served, and the post office address within the State to which the Secretary of State shall mail a copy of any process is: 2209 Genesee Street, Utica, NY 13501.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of the Certificate of Incorporation this 20th day of June, 2008. The undersigned affirms that statements made herein are true under penalties of perjury.



 Sister M. Johanna DeLelys
 President

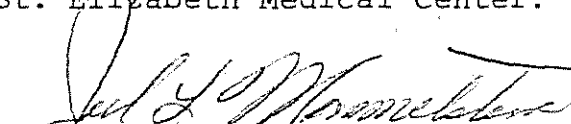
Sworn to before me this 20th day of
 June, 2008



 Notary Public

MARGARET H. JACOBSEN
 Notary Public, State of New York
 Appointed in Oneida County
 My Commission Expires 2/18/2010

The Attorney General hereby approves
 the foregoing Certificate of Amendment
 of the Certificate of Incorporation of
 St. Elizabeth Medical Center.



 Joel L. Marmelstein
 Assistant Attorney General-in-Charge

August 19, 2008

I, John W. Grow, a Justice of the Supreme Court of the State of New York of the Fifth Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of St. Elizabeth Medical Center, Utica, NY amending the Reserve Powers and consent that the same be filed, pursuant to Section 804 of the New York State Not-for-Profit Corporation Law.

Dated: September 2, 2008
Rome, New York

John W. Grow
Hon. John W. Grow
Justice of the Supreme Court

ATTACHMENT B

FAXTON ST. LUKE'S HEALTHCARE
Corporate Documents

Mohawk Valley Network, Inc.
Faxton St. Luke's Healthcare
St. Luke's Home Residential Care Facility
Visiting Nurse Association of Utica and Oneida County, Inc.
Mohawk Valley Home Care, LLC
Senior Network Health, LLC

Gregory B. McLean, Chair

Richard Tantillo, Vice Chair

Todd Hutton, PhD, Secretary

Stephen Sweet, Treasurer

Scott H. Perra, FACHE *
President/CEO

* Coterminous With Position

Domenic P. Aiello, M.D.

Gary E. Gildersleeve

Esther Bankert, PhD.

Karen Leach

Sidney J. Blatt, M.D.

Christopher Max, M.D., President, Medical Staff *

Martin D. Bull

Roger McReynolds

Joan Compson

Michael Papparone

Leroy Cooley, M.D.

William Parker, M.D.

John L. Crossley

James B. Stewart

James E. Frederick, M.D.

Bonnie Woods

Mailing Address for the Board:

Faxton St. Luke's Healthcare

P. O. Box 479

Utica, New York 13503-0479

FILING RECEIPT

ENTITY NAME: FAXTON-ST. LUKE'S HEALTHCARE

DOCUMENT TYPE: CONSOLIDATION (DOM. NFP)

TYPE: B COUNTY: ONEI

SERVICE COMPANY: SERVICO

SERVICE CODE: 35

FILED:12/23/1999 DURATION:***** CASH#:991223000804 FILM #:991223000771

ADDRESS FOR PROCESS

EFFECT DATE

THE CORPORATION
P.O. BOX 479
UTICA, NY 13503-0479

01/01/2000

REGISTERED AGENT



FILER	FEES		PAYMENTS	
-----	-----	55.00	55.00	-----
THOMAS A. SOJA, ESQ.	FILING	30.00	CASH	0.00
P.O. BOX 479	TAX	0.00	CHECK	0.00
	CERT	0.00	CHARGE	0.00
	COPIES	0.00	DRAWDOWN	55.00
UTICA, NY 13503-0479	HANDLING	25.00	BILLED	0.00
			REFUND	0.00

**CERTIFICATE OF CONSOLIDATION
of
FAXTON HOSPITAL and ST. LUKE'S-MEMORIAL HOSPITAL CENTER
into
FAXTON-ST. LUKE'S HEALTHCARE**

Under Section 904 of the Not-For-Profit Corporation Law

We the undersigned, being respectively the Chairman and Secretary of the Board of Directors of Faxton Hospital and the Chairman and Secretary of the Board of Directors of St. Luke's-Memorial Hospital Center, certify:

- 1 (a) The names of each corporation to be consolidated are Faxton Hospital, originally formed as Faxton-Children's Hospital, and St. Luke's-Memorial Hospital Center.
- (b) Faxton Hospital was formed by the filing of the Certificate of Consolidation of the Faxton Hospital and Children's Hospital and Rehabilitation Center of Utica into Faxton-Children's Hospital on December 28, 1988. The name of Faxton-Children's Hospital was changed to Faxton Hospital by the filing of a Certificate of Amendment of Certificate of Consolidation of Faxton-Children's Hospital on October 5, 1992.
- (c) St. Luke's-Memorial Hospital Center was formed by the filing of the Certificate of Consolidation of St. Luke's Home and Hospital in the City of Utica and Utica Memorial Hospital, pursuant to Section 50 of the Membership Corporation Law, on March 13, 1950.
- 2 (a) The sole member of Faxton Hospital is Mohawk Valley Network, Inc.
- (b) The sole member of St. Luke's-Memorial Hospital Center is Mohawk Valley Network, Inc.
- (c) Neither of the constituent corporations have any holders of any certificates evidencing capital contributions or subventions.
3. The name of the consolidated corporation is Faxton-St. Luke's Healthcare.
4. The consolidated corporation shall be a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law.

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5. The purposes and objects of the consolidated corporation shall be as follows:

- a. To establish, operate and maintain a general hospital and comprehensive health care facilities and systems whose purposes may include, but not be limited to, a full range of inpatient services, outpatient services, emergency department services, medical and dental services, residential health care facility services, end stage renal dialysis services, and such other services, facilities and equipment as shall be desirable in meeting the health care needs of the community, to be located at one or more sites.
- b. To carry on educational activities, scientific research and other health related activities and programs incident to the purposes set forth above.
- c. To solicit funds for the above purposes.
- d. To pursue, enhance and support the above purposes through the formation of, or participation in, subsidiary or affiliated corporations as may be established, operated and maintained in accordance with all approvals required by applicable law.
- e. This corporation is organized exclusively for charitable, scientific and educational purposes as a not-for-profit corporation. Upon dissolution of the corporation, and after payment of all just debts and liabilities, all remaining assets shall be distributed to organizations enjoying exempt status under Section 501(c)(3) of the Internal Revenue Code, of 1954, as amended, or successor provisions, pursuant to a plan of dissolution authorized in accordance with the laws of the State of New York. The corporation shall not devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise.
- f. Pursuant to the establishment of the Mohawk Valley Heart Institute, Inc. under Article 28 of the Public Health Law, the consolidated corporation hereby delegates to Mohawk Valley Heart Institute, Inc.:
 - i. Joint operational decision making authority and responsibility with Faxton-St. Luke's Healthcare over such services for which a

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joint operating certificate will be issued by the New York State Department of Health to Mohawk Valley Heart Institute, Inc. and Faxton-St. Luke's Healthcare.

- ii. Notwithstanding the foregoing, Faxton-St. Luke's Healthcare retains control over and does not delegate to Mohawk Valley Heart Institute, Inc., authority and responsibility for all other services, operations, and clinical programs for which no authority has been delegated to Mohawk Valley Heart Institute, Inc. and for which no joint operating certificate will be issued by the New York State Department of Health.

6. The corporation is not organized for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributable to, or inure to the benefit of its members, directors or officers, except to the extent permitted under the Not-For-Profit Corporation Law.

7. The consolidated corporation shall be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law.

8. The office of the corporation is to be in the County of Oneida, State of New York.

9. The duration of the corporation is to be perpetual.

10. The names and addresses of the initial directors of the corporation are as follows:

Richard Notebaert, Jr., Chair
President/CEO
Homestead Savings FA
283 Genesee Street
Utica, NY 13501

Natalie Brown, Vice Chair
Vice President, Marketing
Savings Bank of Utica
233 Genesee Street
Utica, NY 13501

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Lyn Simon, Secretary
Attorney

[REDACTED]

James B. Stewart, Treasurer
Sears Roebuck & Co.
Sangertown Square Mall
Rte. 5 & 5A
New Hartford, NY

Andrew E. Peterson, President/CEO
St. Luke's-Memorial Hospital Center
P. O. Box #479
Utica, NY 13503-0479

William Abraham
CONMED
310 Broad Street
Utica, NY 13501

Sidney J. Blatt, MD
1729 Burrstone Road
New Hartford, NY 13413

Dinesh J. Bhat, MD
2717 Genesee Street
Utica, NY 13501

Milton J. Bloch
Munson-Williams-Proctor-Institute
310 Genesee Street
Utica, NY 13502

John L. Crossley
Utica School of Commerce
201 Bleecker Street
Utica, NY 13501

Alan Rosenblum
Granny's Kitchens Ltd.
10 Industrial Park Drive
Frankfort, NY 13340

Michael Damsky
325 Genesee Street
Utica, NY 13501

John W. Soggs

Elaine Falvo

Stephen L. Sweet

[REDACTED]

James E. Frederick, MD
37 Main Street
Whitesboro, NY 13492

[REDACTED]

Nancy Taylor
Harden Furniture Inc.
Mill Pond Way
McConnellsville, NY 13401

Lawrence T. Gilroy, III
Gilroy, Kernan & Gilroy
PO Box 542
New Hartford, NY 13413

Dwight E. Vicks, III
Vicks Lithograph & Printing Co.
PO Box 270
Yorkville, NY 13495

Laurance C. Lee, MD
[REDACTED]

Mark Godecki, MD
St. Luke's-Memorial Medical Staff
President
1522 Burrstone Road
Utica, NY 13502

Gregory McLean
Caruso McLean & Co. Inc.
110 Lomond Court
Utica, NY 13502

John F. Houck, MD
Faxton Medical Staff President
3946 Oneida Street
New Hartford, NY 13413

Robert W. Ranger
[REDACTED]

Earle C. Reed
Utica Boilers Inc.
2201 Dwyer Avenue
Utica, NY 13501

11. The Secretary of State of the State of New York is hereby designated the 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 is: *P.O. Box 479, Utica, New York 13503-0479.*

12. The effective date of the consolidation of Faxton Hospital and St. Luke's-Memorial Hospital Center into Faxton-St. Luke's Healthcare is January 1, 2000.

13. The plan of consolidation was approved and adopted by Resolution of the Board of Directors of Faxton Hospital on April 28, 1999, and duly approved and adopted by the sole member of the corporation, by unanimous vote of its Board of Directors at a meeting of the member duly called and held on the 18th day of MAY, 1999, which said resolution authorized the Chairman and Secretary to execute and deliver this certificate of consolidation.

14. The plan of consolidation was approved and adopted by Resolution of the Board of Directors of St. Luke's-Memorial Hospital Center on April 28, 1999, and duly approved and adopted by the sole member of the corporation, by unanimous vote of its Board of Directors at a meeting of the member duly called and held on the 18th day of

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MAY, 1999, which said resolution authorized the Chairman and Secretary to execute and deliver this certificate of consolidation.

IN WITNESS WHEREOF, the undersigned have signed this certificate of consolidation on behalf of the respective constitute corporations on this 18th day of MAY, 1999.

FAXTON HOSPITAL

by: Richard Holbert _____ Chair

by: Lyn Simon _____ Secretary

ST. LUKE'S-MEMORIAL HOSPITAL CENTER

by: Richard Holbert _____ Chair

by: Lyn Simon _____ Secretary

VERIFICATION OF FAXTON HOSPITAL

STATE OF NEW)
COUNTY OF ONEIDA) ss.:

I, Richard Holbert, being duly sworn, depose and state that I am Chairman of the Board of Directors of Faxton Hospital, the corporation named in and described in the foregoing Certificate, and that I have read the foregoing Certificate and know the contents thereof to be true, except to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Richard Holbert _____ Chair

Sworn to before me this
18th day of MAY, 1999.

Thomas S. Soja
Notary Public : Comm. Exp.:

THOMAS S. SOJA
Notary Public, State of New York
No. 02SO5001279
Qualified in Oneida County
Commission Expires August 31 2002

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VERIFICATION OF ST. LUKE'S-MEMORIAL HOSPITAL CENTER

STATE OF NEW)
COUNTY OF ONEIDA) ss.:

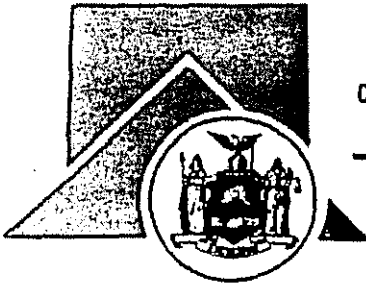
I, Richard Notebaert, being duly sworn, depose and state that I am Chairman of the Board of Directors of St. Luke's-Memorial Hospital Center, the corporation named in and described in the foregoing Certificate, and that I have read the foregoing Certificate and know the contents thereof to be true, except to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Richard Notebaert
Chair

Sworn to before me this
18th day of MAY, 1999.

Thomas S. Soja

Notary Public
Commission Expires:
THOMAS S. SOJA
Notary Public, State of New York
No. 02SO5001279
Qualified in Oneida County
Commission Expires August 31 2000



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

December 15, 1999


Mr. Henry John
Consultant
Kinnally, John & Associates
453 New Karner Road
Albany, New York 12205

Re: Certificate of Consolidation of Faxton Hospital and St. Luke's-Memorial Hospital Center
into Faxton-St. Luke's Healthcare

Dear Mr. John:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 22nd day of October, 1999, I hereby certify that the Certificate of Consolidation of Faxton Hospital and St. Luke's-Memorial Hospital Center into Faxton-St. Luke's Healthcare, dated May 18, 1999 is approved.

Sincerely,


Karen S. Westervelt *for*
Executive Secretary

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CERTIFIED COPY

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONEIDA

In the Matter of the Application of
St. Luke's-Memorial Hospital Center and Faxton
Hospital for an Order Approving their Plan of
Consolidation Under § 907 of the Not-For-Profit
Corporation Law into Faxton-St. Luke's Healthcare,
and authorizing the filing of the Certificate of
Consolidation under § 904 of said Law.

ORDER

Index No. 99 02690
RJI No. 32-99-810

99 DEC 20 AM 10:38
FILED
CLERK COUNTY
CLERK

Faxton Hospital and St. Luke's-Memorial Hospital Center have duly made joint application for an Order, pursuant to § 907 of the Not-For-Profit Corporation Law, approving the Plan of Consolidation of said corporations and authorizing the filing of a Certificate of Consolidation in accordance with § 904 of the Not-For-Profit Corporation Law, and said application having regularly come on to be heard,

NOW, upon reading the Order to Show Cause dated December 8, 1999, the Affidavit of Andrew E. Peterson, President/Chief Executive Officer of Faxton Hospital and St. Luke's-Memorial Hospital Center sworn to on the 8th day of December 1999, and the Plan of Consolidation designated as Exhibit "A" therein and the Certificate of Consolidation of said corporations into Faxton-St. Luke's Healthcare under § 904 of the Not-For-Profit Corporation Law all in support of the application and the Attorney General of the State of New York having filed a Notice of Appearance and Consent dated December 15, 1999, and after due deliberation having been held thereon and it appearing that the interests of the constituent corporations and the public interest will not be adversely affected by the proposed consolidation.

NOW, upon the motion of Thomas S. Soja, Esq., attorney for the applicants, it is

ORDERED, that the Plan of Consolidation of Faxton Hospital and St. Luke's-Memorial Hospital Center, be and the same hereby is approved; and it is further

ORDERED, that this Court does hereby authorize and consent to the filing of the Certificate of Consolidation of Faxton Hospital and St. Luke's-Memorial Hospital Center into Faxton-St. Luke's Healthcare, by the Department of State in accordance with § 904 of the Not-For-Profit Corporation Law, to which Certificate a certified copy of this Order shall be annexed.

ENTER

Dated: December 17, 1999
Utica, New York

Anthony F. Shaheen
Honorable Anthony F. Shaheen,
Supreme Court Justice

SUPREME COURT - COUNTY OF ONEIDA
STATE OF NEW YORK

In the Matter of the Application of
St. Luke's-Memorial Hospital Center
and Faxton Hospital for an Order
Approving their Plan of Consolidation
into Faxton-St. Luke's Healthcare
and Authorizing the filing of the
Certificate of Consolidation

NOTICE OF APPEARANCE
AND CONSENT


Index No. 99 02690

RJI No. 32-99-810UC

ELIOT SPITZER, Attorney General of the State of New York, by the undersigned, does hereby appear in the Supreme Court of the County of Oneida, New York, in the above entitled matter, an Application by two Not-For-Profit Corporations to consolidate, pursuant to §907 of the Not-For-Profit Corporation Law, and for permission to file a Certificate of Consolidation, under § 904 of said Law; and, a copies of the Order to Show Cause (issued by the Honorable Anthony F. Shaheen, JSC, dated December 8, 1999), the Affidavit of Andrew E. Peterson, President of both Faxton Hospital and St. Luke's-Memorial Hospital Center, sworn to December 8, 1999, the Plan of Consolidation, dated April 28, 1999, the proposed Certificate of Consolidation, as adopted on May 18, 1999, together with supporting materials, having been received and examined, does hereby consent to the proposed consolidation and the filing of the Certificate of Consolidation, and requests that the Supreme Court of said County issue an Order, granting the Application, without further or other notice to me in said matter.

Dated: December 15, 1999

ELIOT SPITZER
Attorney General

By: 

FREDERICK C. DEGEN
Associate Attorney
NYS Department of Law
207 Genesee Street
Utica, NY 13501
(315) 793-2225

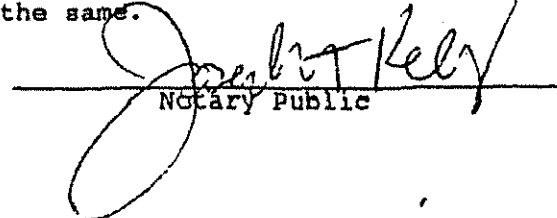
STATE OF NEW YORK)
COUNTY OF ONEIDA) ss:

On this 15th day of December, 1999, before me personally appeared FREDERICK C. DEGEN, Associate Attorney for the State of New York, to me known to be the same person described in, and who executed the above instrument, and he duly acknowledged to me that he executed the same.

Joseph T. Kelly
Notary Public

No. O1KE5088548

County of Oneida, State of N. Y.
My Commission Expires 11/17/2001


Notary Public

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CERTIFICATE OF CONSOLIDATION

OF

FAXTON HOSPITAL AND ST. LUKE'S-MEMORIAL HOSPITAL CENTER
INTO

FAXTON-ST. LUKE'S HEALTHCARE

STATE OF NEW YORK
DEPARTMENT OF STATE

DEC 23 1999

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BY:

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FILER:

THOMAS A. SOJA, ESQ.
P.O. BOX 479
UTICA, NY 13503-0479

DRAWDOWN

CUSTOMER

REFERENCE NUMBER:

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**BY-LAWS
of
FAXTON-ST. LUKE'S HEALTHCARE**

**ARTICLE ONE
NAME**

1.1 NAME

The name of the Corporation is Faxton-St. Luke's Healthcare (herein the Corporation or the Hospital).

**ARTICLE TWO
OFFICES, PURPOSES AND POWERS**

2.1 OFFICES

The principal office of the Corporation shall be located in New York State ("the State"). The Corporation shall have and continuously maintain in the State a registered office and a registered agent whose office shall be identical with the registered office, and may have such other offices as the Board may determine from time to time.

2.2 PURPOSES AND POWERS

The Corporation shall have the following purposes and powers:

- a. To establish, operate and maintain a general hospital and comprehensive health care facilities and systems at one or more sites, whose purposes may include, but not be limited to, the provision of a full range of inpatient and outpatient services, residential health care facilities, and other health related services and facilities.

Each such service or facility shall be established and operated in accordance with all approvals required by the Public Health Law or other law of the State, and all approvals required from any other body having jurisdiction over the Corporation's activities.

- b. To carry on educational activities, scientific research and other health related activities or programs incident to the purposes set forth above.
- c. To solicit funds for the above purposes.
- d. To pursue, enhance, and support the above purposes through the formation of, or participation in, subsidiary or affiliated corporations as may be established, operated and maintained in accordance with all approvals required by applicable law.
- e. Pursuant to the establishment of the Mohawk Valley Heart Institute, Inc., under Article 28 of the Public Health Law, the Corporation hereby delegates to the Mohawk Valley Heart Institute, Inc.:
 - i. Joint operational decision making authority and responsibility with the Corporation over such services for which a joint operating certificate is issued by the New York State Department of Health to Mohawk Valley Heart Institute, Inc. and the Corporation.
 - ii Notwithstanding the foregoing, the Corporation retains control over and does not delegate to Mohawk Valley Heart Institute, Inc., authority and responsibility for all other services, operations, and clinical programs, for which no authority has been delegated to Mohawk Valley Heart Institute, Inc. and for which no joint operating certificate will be issued by the New York State Department of Health.

ARTICLE THREE MEMBERSHIP

3.1 COMPOSITION

Mohawk Valley Network, Inc. ("MVN" or "Member") shall be the sole member of the Corporation.

3.2 RIGHTS OF MEMBER

MVN shall have and exercise all the rights and powers of corporate membership created by the laws of the State of New York or the Certificate of Consolidation or By-laws of the Corporation.

3.3 ANNUAL MEETING

MVN shall, in its capacity as the member of the Corporation, hold its annual meeting each year in April at a time and place determined by MVN. At the annual meeting, MVN shall elect Directors of the Corporation, receive the annual report of the Directors of the Corporation, and transact such other business as may properly come before the meeting. Nomination for seats on the Board of Directors of the Corporation shall be submitted to MVN prior to MVN's annual meeting.

3.4 ANNUAL REPORT TO MEMBER

At the annual meeting of the member, the Chairperson or President, and the Treasurer of the Corporation shall present an Annual Report showing in appropriate detail the following information:

- (a) a complete verified financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation;
- (b) a summary of the activities of the Corporation during the preceding year.

The Annual Report shall be filed with the minutes of the annual meeting.

3.5 ACTION BY MEMBER

Except as otherwise required by law, the Certificate of Consolidation or these By-laws, any action required or permitted to be taken by MVN in its capacity as the sole member of the Corporation may be taken by MVN without a meeting, without prior notice and without a vote, through written consent to such action. The written consent of MVN shall be evidenced by a written resolution of the Board of Directors of MVN signed by an officer of MVN and adopted in accordance with the MVN Articles of Incorporation, By-laws, policies and/or procedures. An original signed copy of each executed written consent of MVN shall be delivered to the Secretary of the Corporation and shall be maintained in the permanent records of the Corporation.

ARTICLE FOUR BOARD OF DIRECTORS

4.1 NUMBER

The Board of Directors shall consist of not less than nine (9) members.

4.2 QUALIFICATION

Directors shall be selected for their experience, expertise and skills; their ability and willingness to devote time and effort to fulfilling the Board's responsibilities; their commitment to the community and the health care needs of its residents; and their personal and professional ethics and values.

4.3 ELECTION AND TENURE

(a) Elected Directors. At each annual meeting of MVN, one-third of the Board shall be elected to full three year terms to replace the Directors whose terms are expiring. An Elected Director shall serve for a term of three (3) years or until his or her successor shall have been elected. No Elected Director may serve more than four (4) consecutive, full three year terms. Notwithstanding the foregoing, the Chairperson, Vice-

Chairperson and Chairperson Emeritus may remain on the Board so as to fulfill his or her obligations as set forth in these Bylaws.

(b) Reappointment. Director reappointment is neither automatic nor guaranteed. The decision will be made on a case by case basis after a thorough assessment of the Director's performance and contribution, his or her commitment to correct any deficiencies, and Board and organizational need.

(c) Non-Elected Directors. The President/Chief Executive Officer of the Corporation and the President of the Medical Staff shall serve as Directors of the Corporation, coterminous with holding their respective positions.

4.4 VACANCIES

Vacancies on the Board due to the expiration of term, removal, resignation, death, or incapacity of a Director, or due to an increase in the number of Board seats, or any other cause, shall be filled by MVN. The Board of Directors of the Corporation may nominate candidates to fill such vacancies, but MVN shall not be bound or limited to the Board's nominees. Directors selected to fill vacancies shall serve the remainder of the term of the Director whose seat has been vacated or until a successor has been elected.

4.5 REMOVAL

(a) Each member of the Board of Directors shall be required to attend at least 80% of all meetings of the Board, any Committees on which he or she serves, and Board Continuing Education Programs. Any Director who fails to maintain sufficient attendance, without good cause acceptable to the Board, shall, upon the recommendation of the Chairperson to MVN, and confirmation by MVN, be dismissed from the Board of Directors.

(b) Any Elected Director may be removed from office by MVN at any time, with or without cause by a vote of two-thirds (2/3) of the Directors of MVN.

4.6 RESIGNATION

Any Director may resign at any time by giving written notice to the Chairperson or to the Secretary of the Corporation. Such resignation shall take effect on the date of receipt thereof or at such later time as may be specified therein.

4.7 ADDITIONAL ADVISORS

The Board or the Chairperson of the Board may invite additional individuals with expertise in a pertinent area to meet with and assist the Board or a Board Committee. Such advisors shall not vote or be counted in determining the existence of a quorum and may be excluded from any session of the Board or Committee by majority vote of the Directors present.

4.8 MEETINGS OF DIRECTORS

(a) Annual Meeting As soon as reasonably possible after the annual election of Directors, the Board shall meet for the purposes of organizing itself, electing officers and members of the Board Committees when appropriate, and conducting such other business as may come before the meeting. At each annual meeting, the Board shall assess its own performance and take such action or make such recommendations as are warranted.

(b) Regular Meetings The Board of Directors shall hold at least eight (8) regular meetings annually. Such meetings shall generally be held during the fourth week of the month.

(c) Special Meetings Special meetings of the Board may be called by the Chairperson, the President, or upon the written request of five (5) Directors. No business shall be conducted at a special meeting other than that stated in the notice of the meeting.

(d) Emergency Special Meetings An emergency special meeting of the Board may be called by the Chairperson, the President, or by any three members of the Board. Emergency special meetings shall be limited to matters of medical necessity requiring Board action.

(e) Place All meetings of the Board shall be held at the principal office of the Corporation or at such other place within this State as the Notice of Meeting shall provide.

(f) Notice Written notice of the time and place of the annual and regular meetings of the Board shall be given to each Director personally by first class mail, by telegram, by facsimile or, where authorized by the Director, by e-mail or other communications device, not less than five (5) days nor more than thirty (30) days before such meeting. Notice of the time, place and purposes of special meetings of the Board shall be served as set forth herein at least three (3) days before the date of such special meeting. An emergency special meeting of the Board, for medical necessity only, may be called in such manner and on such notice as shall be reasonable and required under the circumstances. In the case of a special meeting or when required by law or these Bylaws, the notice shall also state the purpose for which the meeting is called. Oral or written notice of the postponement of any scheduled regular meeting shall be given to each Director not less than one (1) day before the scheduled date of such meeting.

(g) Adjournment When a meeting is adjourned, it is not necessary to give any notice of the adjourned meeting or the business to be transacted at any adjourned meeting other than by motion adopted at the meeting at which such adjournment is taken and included in the minutes.

(h) Quorum Unless a greater or lesser number is required by law, the Certificate of Consolidation or these By-laws, a majority of the Directors then in office constitutes a quorum for the transaction of business at any meeting of the Board. If a quorum is not present at any meeting, a majority of the Directors present may adjourn the meeting to a new date. Notice of such date shall be provided to Board members as required in Section 4.9(f).

(i) Voting Subject to the Conflict of Interest provisions of these By-laws, and the Board's Conflict of Interest policies, each voting Director present is entitled to vote on any matter before the Board.

(j) Manner of Acting Unless otherwise required by law, the Certificate of Consolidation or these By-laws, the act of a majority of the Directors

present at a meeting at which a quorum is present shall be the act of the Board. Any action required or permitted to be taken by the Board may be taken without a meeting by the consent in writing, setting forth the action so taken, of all the Directors. Such written consent(s) shall be filed with the minutes of the Board.

(k) Meeting by Conference Telephone or Similar Device Any one or more members of the Board, or any Committee thereof, may participate in a meeting of such Board or Committee by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear each other at the same time. Participating by such means shall constitute presence in person at such a meeting.

4.9 POWERS AND FIDUCIARY OBLIGATIONS

(a) Powers The administrative powers of the Corporation shall be vested in the Board of Directors, which shall have: charge, control, and management of the property, funds, and affairs of the Corporation; the power to elect and replace officers and to fill vacancies among the officers for unexpired terms; the power to establish policies for the management and operation of the Corporation; and such other power and authority to do and perform all acts and functions for the benefit of the Corporation, not inconsistent with these By-laws or the Certificate of Consolidation. The Board of Directors shall further have the power to appoint standing committees as hereinafter set forth and such other committees as from time to time shall be deemed advisable.

The Board of Directors shall at all times be responsible for the management and operation of the hospital, and shall not enter into any agreement limiting such responsibility.

(b) Fiduciary Obligations The members of the Board of Directors shall at all times conduct the affairs of the Corporation in strict conformance with all applicable fiduciary and ethical standards. Each Director shall act in a manner consistent with the duty of undivided loyalty to the interests of the Corporation, the duty to maintain in confidence information concerning the affairs of the Corporation, the duty to avoid actual or apparent conflicts of interest, and the duty to maintain and advance the charitable purposes of the Corporation. The Board shall adopt such mechanisms as it

deems appropriate to assist the Directors in fulfilling these obligations. Without limiting the foregoing, the Board shall adopt, review and amend as appropriate: the mission and vision of the Corporation; a Board Conflicts of Interest Policy to provide a formal mechanism for identifying and treating actual and apparent conflicts; and mechanisms to ensure corporate compliance with laws, rules and regulations relating to the business of the Corporation.

ARTICLE FIVE OFFICERS

5.1 OFFICERS

The Corporation shall have a Chairperson and Vice-Chairperson of the Board, a President/Chief Executive Officer, and such Vice-Presidents as determined by the Board, a Secretary, and a Treasurer, and such other officers of the Corporation as the Board of Directors may authorize. All officers, except Vice-Presidents, shall be chosen from among the members of the Board of Directors. The Chairperson and Vice-Chairperson shall be elected for two-year terms, or until their successors have been duly elected and qualified. All other officers shall be elected at the annual meeting and shall hold office until the corresponding meeting in the next year or until a successor shall have been duly elected and qualified. Any vacancy in any of the above offices shall be filled for the unexpired portion of the term by the Board of Directors at any regular meeting or any special meeting called for such purpose.

5.2 CHAIRPERSON

The Chairperson shall preside at all meetings of the Board of Directors, shall appoint the members and Chairperson of each Committee in accordance with these By-laws and with the approval of the Board, and shall, except as otherwise stated herein, be an ex officio member of all Committees. The Chairperson shall have the power to make and execute contracts in the ordinary course of business of the Corporation; to execute, with the President and the Secretary, all deeds, mortgages, bonds, and other obligations or instruments when authorized by the Board of Directors; and to execute, with the

Treasurer, all annual or other reports or statements of the Corporation which may be required by law. This power and authority to execute documents and instruments may also be delegated by these By-Laws, the Chairperson, or the Board, to the President or other officers or agents of the Corporation. The Chairperson shall appoint Committee Chairpersons and, after consultation with the Committee Chairpersons, the members of the Committees. Upon completion of her or his term of office, the Chairperson shall hold the title of Chairperson Emeritus for two (2) years.

5.3 VICE-CHAIRPERSON

In the absence or inability to act of the Chairperson, or if the office of Chairperson is vacant, the Vice-Chairperson may exercise all the powers of the Chairperson. The Vice-Chairperson shall have such further power and shall perform such other duties on behalf of the Corporation as may be authorized by order of the Board of Directors.

5.4 PRESIDENT

The Board shall appoint a qualified Hospital Administrator to serve as its President and as the Chief Executive Officer of the Corporation. The President/Chief Executive Officer shall be the Board's direct executive representative in the management of the Hospital. The President/Chief Executive Officer shall have the necessary authority and shall be responsible for the management of the Hospital, and all of its departments, subject only to the policies and directives of the Board and any of its committees to which the Board has delegated power for such action. The President/Chief Executive Officer shall be a voting Director and, except as otherwise expressly provided, an ex officio member of all Board committees and all organizations that are associated or affiliated with the Hospital. The President/Chief Executive Officer shall act as the duly authorized representative of the Board of Directors in all matters except those for which the Board has designated some other individual to act. As the Administrator of the Hospital, the President/Chief Executive Office shall have such administrative duties and responsibilities as are set forth in Article Six, Section 7.1 of these By-Laws.

5.5 VICE PRESIDENTS

(a) *Senior Vice President.* Upon recommendation of the President, the Board may select and appoint a qualified Hospital Administrator to serve as a Senior Vice President who shall, in the absence or inability to act of the President, or if the office of President is vacant, exercise all of the powers of the President, subject to the directives of the Board. The Senior Vice President shall have such further power and authority, and shall perform such other duties on behalf of the Corporation as may be assigned and authorized by the Board or President.

(b) *Vice Presidents.* The Board may provide for one or more Senior Vice Presidents or Vice Presidents with such duties and responsibilities as the Board may from time to time establish or as assigned by the President with the consent of the Board.

5.6 SECRETARY

The Secretary shall act as Secretary of both the Corporation and the Board of Directors and shall be responsible for maintaining copies of the Resolutions of the Corporation's member and keeping the minutes of the meetings of the Board of Directors. The Minutes shall reflect all business conducted, including the Board's findings, conclusions, and recommendations. The Secretary shall be responsible for the giving and serving of all notices of meetings of the member and the Board of Directors of the Corporation; shall be the custodian of the Corporate records and of the Corporate Seal of the Corporation and shall see that the Corporate Seal is affixed to all documents, execution of which on behalf of the Corporation under its Seal, is duly authorized, and when so affixed may attest the same. The Secretary shall have the power, with the Chairperson and the President, to make and execute for and in the name of the Corporation all deeds, bonds, contracts, and other obligations or instruments when authorized by the Board of Directors, and shall, in general, perform all duties incident to the office of the Secretary and such other duties as may, from time to time, be assigned by the Board of Directors.

5.7 TREASURER

The Treasurer shall have general supervision over the care and custody of all funds and securities of the Corporation except as expressly provided otherwise, and shall deposit the same or cause the same to be deposited in the name of the Corporation in such bank or banks, trust company or trust companies, and in such safe deposit company or safe deposit companies as the Board of Directors, or any committee designated and vested with such power by the Board of Directors, may designate; shall keep or cause to be kept full and accurate accounts of all receipts and disbursements of the Corporation and whenever required by the Board of Directors shall render, or cause to be rendered, financial statements of the Corporation. The Treasurer shall prepare, execute and file, with the President, any annual report or statement which may be required by law.

ARTICLE SIX COMMITTEES OF THE BOARD OF DIRECTORS

6.1 STRUCTURE

There shall be six (6) Standing Committees of the Board: Executive and Administrative Affairs Committee, Finance Committee, Quality and Patient Safety Committee, Governance Affairs and Ethics Committee, Joint Conference Committee and Executive Compensation Committee. The Board may, by resolution, create such other standing or ad hoc committees as it shall, from time to time, deem appropriate. Any ad hoc committees appointed by the Board shall be charged with such specific duties as determined by the Board and shall be disbanded upon completion of such duties.

6.2 PROCEDURE

The Standing Committees of the Board shall conduct their activities in accordance with the following general principles and procedures unless alternative principles or procedures are adopted for any individual committee in these By-Laws or in a Resolution of the Board of Directors.

6.3 POWERS

Each Board Committee shall have and exercise only such Board delegated powers and authority as are granted to it in these By-Laws, or in a Resolution adopted by the full Board. Each Committee shall keep minutes of its proceedings and report its activities, conclusions and recommendations to the Board. Actions and recommendations of a Committee shall be subject to Board approval. Each Committee shall prepare a meeting calendar and an annual work plan setting forth its goals and objectives, which shall be submitted to the Board for its approval at its first meeting of each fiscal year. The performance of each Committee shall be reviewed annually at the last meeting of the Board prior to its annual meeting in April.

6.4 COMMITTEE MEMBERS

- (a) Appointment. At each annual meeting, the Chairperson of the Board shall recommend, for Board approval, the appointment of all Committee members and Committee Chairpersons after consulting with the Governance Affairs and Ethics Committee. To the extent practicable, and except for those Committee assignments which are coterminous by position, Committee appointments shall be rotated at least every three (3) years among the members of the Board so as to promote experience and knowledge in all aspects of the operation of the Hospital.
- (b) Tenure. Each member of a Board Committee shall hold office until the next annual election of Directors and until his or her successor is elected, unless he or she sooner ceases to be a Director or resigns or is removed from the Committee.
- (c) Resignation. Any member of a Board Committee may resign at any time by giving written notice to the Chairperson of the Committee. Such resignation takes effect on the date of receipt, or at such later time as may be specified therein.

- (d) Removal. Any member of a Board Committee may be removed at any time by a resolution adopted by a majority of the Board of Directors. Any member of a Board Committee who is a member by virtue of holding a designated position or office shall cease to be a Committee member if he or she ceases to hold the designated position or office which is the basis of Committee membership.
- (e) Vacancies. Any vacancy on any Board Committee resulting from resignation, removal or increase in the membership of a Committee, may be filled for the unexpired portion of the term by the Chairperson of the Board, subject to the approval of the Board.

6.5 ADVISORS AND EX OFFICIO MEMBERS OF BOARD COMMITTEES

The Chairperson of the Board, after consultation with the Chairperson of any Board Committee, may invite additional individuals with expertise in a pertinent area to meet with and assist the Board Committee either as advisors or ex officio members of the Committee. Such advisors and/or ex officio members shall not vote or be counted in determining the existence of a quorum and may be excluded from any executive session of the Committee by a majority vote of the Committee members present. Advisors and ex officio members need not be Directors of the Hospital.

6.6 MANNER OF ACTION

- (a) Meetings. Each Committee shall meet as provided for in these By-Laws and at such additional times as may be necessary to perform its duties. Meetings of a Board Committee shall be called by the Chairperson of the Board, the Chairperson of the Committee, the President, or any two of the Committee's voting members. Oral or written notice of the time and place of any meeting of a Board Committee shall be given, except in an emergency, at least 72 hours prior to the meeting.

- (b) Agenda/Minutes. There shall be an agenda prepared for Committee meetings and Minutes of the meeting shall be recorded and shall include the Committee's findings, conclusions and recommendations. The Minutes of Committee meetings shall be available to the Board of Directors when requested or as required.
- (c) Quorum. A majority of the voting members of a Board Committee shall constitute a quorum for the transaction of business at any meeting of such Committee.
- (d) Action. The act of a majority of the members of a Board Committee present at a meeting, at which a quorum is present, shall be the act of the Committee. No act taken at a meeting at which less than a quorum is present is valid unless approved in writing by the absent members. Any action required or permitted to be taken by a Committee may be taken without a meeting if all Committee members file written consents to a resolution authorizing the action with the relevant Minutes of the Committee.
- (e) Conference Telephone. Any one or more members of any Committee may participate in any meeting of the Committee by conference telephone or similar communications equipment allowing all participants in the meeting to hear each other. Participation by this means shall constitute actual presence at the meeting.

6.7 CONFLICT OF INTEREST

Any Committee exercising Board delegated power or authority shall comply with the Conflict of Interest policies and procedures established by the Board of Directors.

6.8 EXECUTIVE AND ADMINISTRATIVE AFFAIRS COMMITTEE

(a) Composition

The Executive and Administrative Affairs Committee (herein “Executive Committee”) shall be composed of the Chairperson of the Board, the Vice Chairperson, President, Secretary, Treasurer, President of the Medical Staff, the Chairperson Emeritus and such additional voting Directors as may be selected by the Board.

(b) Functions

When the Board is not in session, the Executive Committee shall have and exercise the powers and authority of the Board to transact all regular business of the Hospital, subject to any prior limitations imposed by the Board, these By-Laws, or statute. In addition, the Executive Committee shall:

- (1) Oversee the development of labor relations and negotiation strategy and recommend to the Board approval of collective bargaining agreements.
- (2) Review and recommend to the Board, with the assistance of counsel, policies and guidelines for financial transactions with physicians, including recruitment, retention, employment or other agreements with the Corporation..
- (3) Review and recommend to the Board, legislative and regulatory affairs initiatives.
- (4) Review and report to the Board as to the Corporation’s completion and filing of IRS Form 990 and such other reports or filings as may be required by the Internal Revenue Service.
- (5) Perform such other duties related to governance of the Hospital as may be assigned to it by the Board.

(c) Meetings

The Executive Committee shall meet at least two (2) times annually and as necessary to conduct the business of the Hospital while the full Board is not in session.

6.9 FINANCE

(a) Composition

The Finance Committee shall consist of the Treasurer of the Corporation, as Committee Chairperson, the President/Chief Executive Officer, and at least 6 voting Directors. The Chief Financial Officer, Chief Operating Officer and the Controller of the Hospital shall serve as advisors to the Committee.

(b) Functions

The Finance Committee shall have general oversight responsibility for the fiscal affairs of the Hospital and shall develop and recommend for Board approval, policies and procedures which will enable the Board to provide appropriate direction and oversight of the financial affairs of the Corporation and its subsidiaries. Its functions shall include:

- (1) Develop and recommend to the Board a policy framework which will enable the Board to provide direction, set and monitor performance expectations and exercise financial oversight, including:
 - (i) Measures/indicators of financial performance and volume, for the Hospital and its subsidiaries;
 - (ii) Policies which govern limitations on management's financial authority and identify decisions requiring specific Board approval;
 - (iii) Defining the content and format of monthly, quarterly and annual reports on the financial performance of the Corporation and its subsidiaries;
 - (iv) Oversight and evaluation of overall financial performance and, where required, management plans to remedy variances from expected performance.
- (2) Provide oversight and direction to the financial audit, including:

- (i) Recommending selection of auditors and the scope and frequency of audits for the Corporation and its subsidiaries;
 - (ii) Review and report to the Board on the final audit reports and recommendations of the auditors;
 - (iii) Develop policy recommendations to the Board in response to audit reports, as needed;
- (3) Review and make policy recommendations to the Board concerning long-range financial and capital plans for the Corporation and its subsidiaries, including, as appropriate, purchase or sale of assets or businesses.
- (4) Review and make policy recommendations to the Board on operating and capital expenditure budgets for the Corporation and its subsidiaries, including analysis and recommendations concerning key assumptions underlying the budget development process.
- (5) Develop and recommend to the Board policies concerning major business and facilities plans and financial transactions requiring specific Board approval.
- (6) Review and develop policies concerning insurance and managed care contracting for the Corporation and its subsidiaries.
- (7) Establish investment standards and expectations and review and monitor investment performance of the managers of the investment, endowment and other funds of the Corporation and its subsidiaries.
- (8) Provide oversight and develop and recommend policies to the Board for its Corporate Compliance Program.

- (9) Provide oversight and develop polices to insure the sufficiency of the liability insurance programs of the Corporation and its subsidiaries.
- (10) Provide direction and guidance on appropriate Board education programs regarding healthcare finance
- (11) Perform such other duties related to fiscal matters as may

be assigned to it by the Board or the Committee Chairperson.

(c) Meetings

The Finance Committee shall meet as needed, but not less than 9 times per year.

6.10 QUALITY AND PATIENT SAFETY COMMITTEE

(a) Composition.

The Quality and Patient Safety Committee shall consist of the President/Chief Executive Officer and not less than 6 other voting Directors. The Hospital's Chief Medical Officer, Chief Operating Officer and Chief Nursing Officer shall serve as advisors to the Committee.

(b) Functions.

The Quality and Patient Safety Committee shall have general oversight responsibility for ensuring the maintenance of a coordinated program which integrates the review activities of all Hospital and subsidiary services for the purpose of enhancing the quality of patient and resident care and identifying and implementing improvement programs as may be required by governmental, licensing or regulatory authorities. The Committee shall specifically:

- (1) Develop and recommend to the Board a policy framework to enable the Board to provide direction and exercise oversight of all quality and service performance, including:
 - (i) Establish the process and format by which quality and service are measured, reported and monitored by the Board and the Committee, including

- establishing specific indicators of clinical quality and service performance;
- (ii) Develop and recommend policies which define the scope of management authority without specific determination by, or direction from, the Board;
 - (iii) Assess the role and establish mechanisms for the reporting and monitoring of the quality of service provided by the Corporation's subsidiaries and/or third parties providing services to the hospital by contract, and coordinating the provision of services by the Corporation, its subsidiaries and third parties.
- (2) Recommend policies and provide direction for the Hospital's quality improvement plan, including establishing performance improvement priorities based on the mission, vision and strategic goals of the Hospital and its subsidiaries.
 - (3) Oversee regulatory compliance, safety, infection control and such other programs as shall be required to insure continuous accreditation of the Hospital.
 - (4) Review and report to the Board on Department of Health, Office of Mental Health, and other regulatory surveys and findings and any required plans of correction.
 - (5) Review reports or information obtained from Customer Satisfaction Surveys, Performance Improvement Teams, Risk, Safety, Utilization and Case Management Programs, and other executive level data impacting organizational quality performance.
 - (6) Receive and review quality improvement plans and reports and recommendations from the Corporation's subsidiaries concerning quality and performance improvement

activities, including reports from any required quality or advisory committees of the subsidiary boards.

- (7) Assist in the development of Board educational processes regarding quality and service improvement with the assistance and participation of the medical staff and hospital management.
- (9) Perform such other duties as may be assigned to it by the Board or the Committee Chairperson.

(c) Meetings

The Quality and Patient Safety Committee shall meet at least quarterly, and at such other times as shall be necessary to discharge the obligations and duties of the Committee.

6.11 GOVERNANCE AFFAIRS AND ETHICS COMMITTEE

(a) Composition

The Governance Affairs and Ethics Committee shall consist of the President/Chief Executive Officer and not less than four (4) other voting Directors. As necessary, the corporation's legal counsel shall serve as an advisor to the Committee.

(b) Functions

The Governance Affairs and Ethics Committee shall have general responsibility for developing and recommending policies concerning the organization, functioning and performance of the Boards of the Corporation and its subsidiaries; developing and monitoring a Board education plan; review and amendment of corporate and subsidiary Bylaws; and nomination of directors and officers of the Corporation and members of the Boards of the Corporation's subsidiaries. Its functions shall include:

- (1) Recommend new and/or changes to existing policies regarding Board organization, functioning and performance, including:
 - (i) Conflict of Interest;
 - (ii) Policy based governance;

- (iii) Fiduciary obligation;
 - (iv) Committee structure and philosophy;
 - (v) Governance operations; and
 - (vi) Officer and committee chairperson position descriptions.
- (2) Review of potential and actual Board discipline issues, including adherence to attendance policy, conflicts of interest policy, and information disclosure policy and, where appropriate, make recommendations to the Board on disciplinary action.
 - (3) Develop and recommend to the Board the tools, framework, and criteria to be used to evaluate the structure and performance of the governing boards of the Hospital and its subsidiaries.
 - (4) Design, initiate and oversee the Board Evaluation Process on an annual and long-term basis.
 - (5) Make recommendations to the Board concerning the establishment of criteria and qualifications for service on the Board and Committees of the Corporation and its subsidiaries.
 - (6) Nominate directors and officers of the Board and members of the Corporation's subsidiary boards.
 - (7) Develop an orientation process for new Board and Committee members for the Hospital and its subsidiaries, with the assistance of the Chief Executive Officer.
 - (8) Develop an annual Board Education Plan, including internal and external educational opportunities, and identify key healthcare issues to be included in the annual plan.
 - (9) Periodically review, and recommend changes to the Bylaws of the Corporation and its subsidiaries to insure compliance

with the mission, vision, purpose and structure of the Corporation and its subsidiaries.

(10) Perform such other duties as may be assigned to it by the Board or Committee chairperson.

(c) Meetings

The Governance Affairs and Ethics Committee shall meet at least two (2) times per year, and at such other times as shall be necessary to discharge the obligations and duties of the Committee.

6.12 JOINT CONFERENCE COMMITTEE

(a) Composition

The Joint Conference Committee will be composed of the Chairperson, Vice Chairperson, President, Secretary and Treasurer of the Board, the Chairperson of the Quality and Patient Safety Committee of the Board, the four (4) officers of the Medical Staff and two additional medical staff members appointed by the President of the Medical Staff. The Chairperson of the Committee will alternate each meeting between the Chairperson of the Board, or his or her designee, and the President of the Medical Staff, or his or her designee. The Hospital's Chief Medical Officer, Chief Nursing Officer and Chief Operating Officer will be ex-officio, non-voting members of the Committee.

(b) Functions

The Joint Conference Committee will serve as a forum for the discussion of Hospital and Medical Staff policy, practice and planning and provide for effective liaisons between and among the Board of Directors, the Medical Staff and Administration. It shall also serve as a forum for addressing Medical Staff and Board of Directors' concerns and issues relating to operational quality and service performance. It shall exercise such specific responsibilities as assigned by the Board of Directors and as set forth in the Medical Staff Bylaws.

(c) Meetings

The Committee will convene at least two (2) times per year or as shall be necessary to discharge its responsibilities.

6.13 EXECUTIVE COMPENSATION COMMITTEE.

(a) Composition

The Executive Compensation Committee shall be composed of the Chairperson and at least four (4) additional Directors appointed by the Chairperson. All members of the Executive Compensation Committee shall be “Independent Directors” as that term is defined in Section 4958 of the Internal Revenue Code and supporting regulations. In the event that the Chairperson is not an “Independent Director”, the Board shall appoint another Independent Director to serve in the place of the Chairperson. The President/CEO of the Corporation shall not be a member of the Committee, but may serve as an advisor to the Committee as long as he or she is excused when the Committee is reviewing the CEO’s compensation package.

(b) Functions.

The Executive Compensation Committee is appointed to discharge the duty of the Board to fulfill its oversight in determining the adequacy and reasonableness of the compensation paid to the President/CEO and other employees or individuals that the Committee believes are in a position to exercise substantial influence over the affairs of the Corporation, all as outlined in Section 4958 of the Internal Revenue Code and supporting Regulations (“Disqualified Persons”). Without limiting the foregoing, the Committee shall:

1. Recommend the terms of employment for the CEO and establish the total compensation package, including base salary, variable compensation, benefits and perquisites.
2. Develop, oversee and maintain administrative control of the Corporation’s executive compensation program by identifying all individuals with substantial influence over the organization and assuring that executive compensation arrangements for the CEO and other Disqualified Persons are managed consistently and meet the “standards of reasonableness” established by the Committee.

3. Receive recommendations from the CEO and approve the terms of employment for senior leadership of the Corporation, including the COO, CFO, CMO, CNO and other members of the executive management team as determined by the Board, and, if applicable, establish ranges of reasonable compensation for each such position and authorize the CEO to set compensation within approved ranges based on an evaluation of performance.
4. With input from the remaining members of the Board of Directors, establish performance criteria at the beginning of the year for the CEO, and such other senior executives as deemed appropriate; monitor performance during the course of the year, and evaluate the performance and accomplishments of the CEO against established goals at the end of each year. The Committee shall also receive from the CEO an overview of the annual performance of senior leadership of the Corporation.
5. Have the Chairperson meet with the CEO and, as appropriate, the Committee's Compensation consultant prior to the beginning of each fiscal year to establish a timeline and agenda for the current year's executive compensation program and review.
6. Keep minutes of meetings and supporting documentation of the Committee's decisions that meet the requirements of Internal Revenue Code Section 4958.
7. Periodically review the total value and cost of severance and retirement benefits for senior executives and assess their reasonableness.

8. Monitor changes in laws and regulations pertaining to executive compensation to ensure that the Corporation complies with all requirements.

9. Regularly report its activities and findings to the Board.

c. Resources of the Committee.

The Committee shall have such resources and authority as it deems appropriate to discharge its duties and responsibilities, including the authority to directly select, engage and supervise any consultant, accountant, legal counsel or other advisor hired by the Corporation to advise the Committee on executive compensation and related matters. In carrying out its responsibilities, the Committee may rely upon reasoned, written opinions of consultants and/or legal counsel.

d. Meetings.

The Committee shall convene at least two (2) times per year or as shall be necessary to discharge its responsibilities.

ARTICLE SEVEN ADMINISTRATION

7.1 PRESIDENT/CEO

The Board of Directors shall select and appoint a competent hospital administrator who shall act as President of the Board and Chief Executive Officer of the Corporation. The President/CEO shall have such qualifications as are prescribed by the New York State Hospital Code, as may be amended from time to time. The President/CEO shall be given the necessary authority and responsibility to operate the hospital in all its activities and departments, subject only to such policies as may be issued by the Board of Directors or by any of its Committees to which it has delegated power for such action. The President/CEO's performance shall be monitored in an ongoing manner by the Board of Directors and its Committees. The President/CEO shall act as the duly authorized representative of the Board in all matters in which the Board has not formally designated some other person to act.

The daily management and operational affairs of the hospital shall be the responsibility of the President/Chief Executive Officer. Without limiting the foregoing, the authority and responsibility of the President/Chief Executive Officer shall include:

- (a) Aid the Board in the formulation of policies and procedures and carrying out all policies established by the Board.
- (b) Development of a plan of organization of hospital personnel and other persons concerned with the conduct of the hospital's operation and submission of the plan to the Board for approval.
- (c) Preparation of an annual budget showing the expected receipts and expenditures of the hospital as required by the Board.
- (d) Development, submission and implementation, in a timely manner, of all plans to correct operational deficiencies identified by regulatory agencies, and reporting to the Board progress and carrying out plans of correction.
- (e) Assisting the Board in communication and cooperation with the hospital's Medical Staff.
- (f) Assisting the hospital's Medical Staff with its organizational and medical administrative responsibilities.
- (g) Responsibility for all management and operational affairs of the hospital as required under the New York State Hospital Code, the requirements of the Hospital's accrediting organization and the responsibilities and duties established by all other regulatory bodies having jurisdiction.
- (h) Performance of such other duties as may be necessary in the best interests of the hospital.

7.2 MEDICAL DIRECTOR

The Board of Directors shall, after consultation with the Medical Staff, select and appoint a competent Medical Director who shall have administrative responsibility for the hospital's clinical departments and medical education programs. Responsibility for the organization and conduct of the Medical Staff shall be developed and defined in writing, in consultation with the Medical Staff, and assigned to the Medical Director. The Medical Director shall have such qualifications as may be required by the New York State Hospital Code, as amended from time to time. The Medical Director shall have such authority and responsibility as required to perform his or her duties, including:

- (a) Coordinating the appointment and re-appointment process of the members of the Medical Staff, including investigation and assurance of qualifications for membership, as provided in the Medical Staff By-Laws.
- (b) Oversee the granting of clinical privileges consistent with the practitioner's training, experience and demonstrated competence.
- (c) Monitor and ensure Medical Staff compliance with the hospital's Bylaws, the Medical Staff By-laws, the rules and regulations and Policies of the Medical Staff, hospital policies and procedures, and all applicable laws, rules, regulations, and accrediting standards.
- (d) Oversee the activities, findings and recommendations of all medical staff quality improvement programs and promptly initiate or recommend appropriate corrective measures, consistent with the Medical Staff Bylaws.
- (e) Monitor the activities and performance of the hospital's clinical departments and Department Chairpersons and make such reports and recommendations to the Board as shall be appropriate.
- (f) Perform such other duties as may be required under the

New York State Hospital Code, as may be assigned by the Board and CEO, or as shall be appropriate and necessary in the best interests of the Hospital.

ARTICLE EIGHT QUALITY ASSURANCE

8.1 BOARD RESPONSIBILITY

The Board shall establish, maintain, support and exercise oversight of an ongoing quality assurance program that includes specific and effective review, evaluation and monitoring mechanisms to assist, preserve and improve the overall quality and efficiency of patient care in the hospital.

8.2 DELEGATION TO ADMINISTRATION AND TO THE MEDICAL STAFF

(a) TO ADMINISTRATION

Except as may be set forth in any policy adopted by the Board from time to time, the Board delegates to the administration and holds it accountable for providing the administrative assistance reasonably necessary to support and facilitate the implementation of an on-going operation of the hospital's quality assurance program, for implementing the quality assurance program as it concerns non-medical professional personnel and technical staffs and patient care units, and for analyzing information and acting upon problems involving technical, administrative and support services and hospital policy.

(b) TO MEDICAL STAFF

The Board delegates to the Medical Staff and holds it accountable for conducting specific activities that contribute to the preservation and improvement of the quality and efficiency of patient care provided in the hospital. These activities include:

- (1) Systematic evaluation of practitioner performance against explicit, predetermined objective criteria.**

- (2) On-going monitoring of critical aspects of care including, but not limited to, antibiotic and drug usage, transfusion practices, infections, mortalities, monitoring of unexpected clinical occurrences, and such other aspects of clinical care as shall be determined by the Board.
- (3) Review utilization of the hospital's resources to provide for their proper and timely allocation to patients in need of them.
- (4) Provision of continuing professional education, fashioned in part on the needs identified through the review, evaluation and monitoring activities and on new state-of-the art developments.
- (5) Definition of the clinical privileges which may be appropriately granted within the hospital and within each department, delineation of clinical privileges for members of the Medical Staff commensurate with individual credentials and demonstrated ability and judgment, and participation in assigning patient care responsibilities to other health care professionals consistent with individual qualifications and demonstrated ability.
- (6) Management of clinical affairs, including enforcement of clinical policies and consultation requirements, initiation of disciplinary actions, surveillance over requirements for performance monitoring and for the exercise of newly-acquired clinical privileges, and other clinically-oriented activities.
- (7) Such other measures as the Board may, after considering the advice of the Medical Staff, the other professional services and the hospital management, deem necessary for

the preservation and improvement of the quality and efficiency of patient care.

ARTICLE NINE MEDICAL STAFF

9.1 ORGANIZATION

The Board has created a medical staff organization, to be known as the Medical Staff of Faxton-St. Luke's Healthcare, whose membership shall be comprised of all practitioners who are privileged to attend patients in the hospital. Membership in this medical staff organization is a prerequisite to the exercise of clinical privileges in the hospital, except as otherwise specifically provided in the Medical Staff By-laws.

9.2 MEDICAL STAFF MEMBERSHIP AND CLINICAL PRIVILEGES

(a) Delegation To the Medical Staff

The Board delegates to the Medical Staff (Staff) the responsibility and authority to investigate and evaluate all matters relating to Medical Staff membership status, clinical privileges and corrective action, and shall require that the Staff adopt and forward to the Board specific written recommendations with appropriate supporting documentation that will allow it to take informed action.

(b) **Action by the Board** Action on all matters relating to Medical Staff membership status, clinical privileges and corrective action shall be taken by the Board after considering the Staff recommendations, provided that the Board must act in any event if the Staff fails to adopt and submit any such recommendation within the time periods set forth in the Medical Staff By-laws. Such Board action without a Staff recommendation must be based on the same kind of documented investigation and evaluation of current ability, judgment, and character as is required for Staff recommendation.

(c) Criteria for Board Action

In acting on matters of Medical Staff membership status and in granting and defining the scope of clinical privileges to be exercised by each practitioner, the

Board shall consider the Staff's recommendations, the supporting information on which they are based, and such criteria as are set forth in the Medical Staff By-laws. No aspect of membership status nor specific clinical privileges shall be limited or denied to a practitioner on the basis of sex, race, age, creed, handicap, or national origin, or on the basis of any other criterion unrelated to good patient care at the hospital, to required professional qualifications, to the hospital's purposes, needs, capacity or capabilities, or to community needs.

(d) Term and Conditions; Procedure

The terms and conditions of membership status in the Medical Staff and of the exercise of clinical privileges, and the procedures to be followed by the Medical Staff and the Board, shall be specified in the Medical Staff By-laws, and Policies (Rules and Regulations).

(e) Fair Hearing Plan

The Board shall require that any adverse recommendation or action with respect to a practitioner's staff appointment, re-appointment, department or other clinical unit affiliation, staff category, admitting prerogatives or clinical privileges, shall, except under circumstances for which specific provision is made in the Medical Staff By-laws, be accomplished in accordance with a Board-approved Fair Hearing Plan.

9.3 MEDICAL STAFF BYLAWS AND AMENDMENTS PROCESS

(a) Delegation to the Medical Staff

The Board hereby delegates to the Medical Staff the authority and responsibility to draft, debate and recommend to the Board, in a timely and good faith manner, such By-laws, rules, regulations, procedure manuals and other organizational protocols as are appropriate for the proper governance of the Medical Staff organization, including amendments thereof, provided that the same shall not be effective until acted upon favorably by the Board.

(b) Board Action

The Board, at any regular or special meeting at which the matter is duly considered, may by an affirmative vote of a majority of the Directors present adopt the

recommendation of the Medical Staff. In the event that concerns are raised by the Board with respect to Medical Staff recommendations it may refer the proposed recommendation back to the Medical Staff through the Medical Staff President, the Medical Staff Executive Committee, or such other individual or individuals as determined by the Board. These parties shall address the concerns of the Board and the Medical Staff and shall thereafter report back to the Board with any new or modified recommendations.

ARTICLE TEN INDEMNIFICATION AND INSURANCE

10.1 INDEMNIFICATION AND INSURANCE:

It is expressly provided that any and every person or his or her estate that is made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal, by reason of the fact that he or she is or was a director or officer of this Corporation, or served such other corporation in any capacity at the request of this Corporation, will be completely indemnified by the Corporation to the full extent permitted by law. If permitted by law, this indemnification shall include, but not be limited to, the payment of one or more of the following: judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred as a result of such action, suit or proceeding, or any appeal therein.

10.2 INSURANCE.

It is the policy of the Corporation that any and every person, or his or her estate, that is made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal by reason of the fact that he or she is or was a director or officer of this Corporation, or served such other corporation in any capacity at the request of the Corporation, will be completely and fully indemnified by this Corporation to the full extent permitted by the law. The Corporation may purchase and maintain insurance to completely and fully indemnify any and every such person, whether or not this

Corporation has the power to indemnify him or her against such liability under the laws of this or any other state.

ARTICLE ELEVEN CONFLICT OF INTEREST

11.1 POLICY

Any Director, officer, key employee, medical staff member, or committee member having an existing or potential interest in a contract or other transaction presented to the Board of Directors or a committee thereof for deliberation, authorization, approval, or ratification, or any such person who reasonably believes such an interest exists in another such person, shall make a prompt, full and frank disclosure of the interest to the Board or committee prior to its acting on such contract or transaction which might reasonably be construed to be adverse to the Corporation's interest.

11.2 EFFECT

The body to which such disclosure is made shall determine, by majority vote, whether the disclosure shows that the non-voting and non-participation provisions contained in the Board approved Conflicts of Interest Policy must be observed. If so, such person shall not vote on, nor use his personal influence on, nor participate (other than to present factual information or to respond to questions) in the discussions or deliberations with respect to such contract or transaction. Such person may not be counted in determining the existence of a quorum at any meeting where the contract or transaction is under discussion or is being voted upon. The minutes of the meeting shall reflect the disclosure made, the vote thereon and, where applicable, the abstention from voting and participation, and whether a quorum was present.

11.3 FORMAL POLICY AND PROCEDURE

The Board shall adopt a formal Conflict of Interest Policy requiring disclosure of existing and potential conflicts of interest, mechanisms for addressing actual and potential

conflicts of interest and corrective and disciplinary action with respect to transgressions of such policies.

ARTICLE TWELVE VOLUNTEER ORGANIZATIONS

12.1 The Board shall organize a volunteer organization, or such other associated organizations as it deems appropriate, consisting of individuals who are interested in rendering services as volunteers to the Hospital and in assisting in the fulfillment of the mission of the Corporation. There shall be By-laws, rules and regulations for such organizations, setting forth their organization and governance. Proposed By-laws may be recommended, but only those approved by the Board of Directors shall become effective.

ARTICLE THIRTEEN AMENDMENT TO BY-LAWS

13.1 PROCEDURE

These Bylaws may be amended or repealed, or new Bylaws may be adopted, only by Mohawk Valley Network, Inc. (MVN) in its capacity as the sole member of the Corporation. For this purpose, a majority vote of the Directors of MVN shall be required. The Board of Directors of the Corporation may also propose amendments for approval by MVN or MVN may adopt, amend, or repeal Bylaws on its own initiative following the procedures herein noted. Proposed Amendments require a majority vote of the Board of Directors taken at any regular or special meeting. At least ten (10) days written notice shall be given of the intention to take such action. The Governance Affairs and Ethics Committee shall conduct an annual review of these Bylaws and make recommendations for such amendments as may be necessary to assure compliance with all applicable laws, rules and regulations and the requirement of the Hospital's accrediting authority.

ARTICLE FOURTEEN

GENERAL

14.1 PROCEDURE

The Board and any Board Committee may adopt rules or procedures which shall not be inconsistent with these By-laws.

14.2 EQUAL OPPORTUNITY

The Board shall, in all matters, act without regard to discrimination as to sex, race, age, creed, handicap, or national origin.

14.3 CONSTRUCTION OF TERMS AND HEADINGS

Words used in these By-laws shall be read as the masculine or feminine gender and as the singular or plural, as the context requires. The captions or headings in these By-laws are for convenience only and are not intended to limit or define the scope or effect of any provision of these By-laws.

MOHAWK VALLEY NETWORK
FAXTON-ST. LUKE'S HEALTHCARE

Special Executive and Administrative Affairs Committee (EAAC)

September 15, 2010

7:30 a.m. Administrative Conference Room

Attending: Gregory McLean, Chair, Richard Tantillo *, Todd S. Hutton, Stephen Sweet, Joan Compson, Scott Perra

* Conferenced In

Administrative Staff: Thomas Soja, Esq.

Excused: Christopher Max, MD

I. Call to Order

Mr. McLean convened a special meeting of the Executive & Administrative Affairs Committee at 7:30 a.m.

II. Digestive Disease Medicine (DDM) Certificate of Need Application

As discussed at the September 1st meeting, the Establishment Committee has recommended that DDM and the Hospitals return and work out a community solution. On September 8th, Mr. McLean, Mr. Perra, and Mr. Soja met with Judge Siegel, Rick Ketcham, Bob Scholefield, and Tracy Boris from St. Elizabeth Medical Center to work out a strategy and proposal to submit to DDM that reflects a unified hospital approach.

DDM had submitted an offer letter to both hospitals and a joint letter of response was submitted. Mr. Perra distributed a handout outlining the verbal proposal reached with DDM at the meeting on September 10th. St. Elizabeth Medical Center will be seeking their board approval as well. Mr. Perra reviewed the handout citing ownership, actions requiring unanimous voting, and other elements related to expenses between parties, and medical staff privileges. This proposal changes our strategy from blocking the CON to minimizing its impact. There are many details to work out under a short time table. DDM will be purchasing a building in the Business Park, closing October 8th and estimate a four month build out to ready the building for occupancy. We will be responsible for 20% of the start up costs as the buy-in for the project including equipment and other expenses which will be part of the proforma.

Discussion/Comments:

1. The 20% is relative to the new business (LLC) and will be separate from DDM's current practice.
2. This process has been a good beginning to our relationship with SEMC and will send a positive message to the community.
3. Capital and start up costs will be provided in the proforma and we will have access to the financials on a regular basis.

4. Voting members will be determined through the LLC.

MOTION: Following lengthy discussion, Mrs. Compson moved that the Executive and Administrative Affairs Committee approve the proposal as presented today for the Faxton St. Luke's Healthcare, St. Elizabeth Medical Center, and Digestive Disease Medicine joint venture. Motion was seconded by Mr. Sweet and unanimously approved.

The entire team was commended for a great job.

/end

Facility Id. 599
Certificate No. 3202003H



State of New York
Department of Health
Office of Health Systems Management

OPERATING CERTIFICATE

Hospital

Faxton-St Lukes Healthcare St Lukes Division
1656 Champlin Avenue
Utica, New York 13502

Effective Date: 01/05/2009
Expiration Date: NONE

Certified Beds - Total 346
Coronary Care 8
Intensive Care 22
Maternity 26
Medical / Surgical 238
Neonatal Continuing Care 4
Neonatal Intermediate Care 8
Pediatric 14
Psychiatric 26

Operator: Faxton-St Lukes Healthcare
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Ambulatory Surgery - Multi Speciality	Cardiac Catheterization - Adult Diagnostic	Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	Clinic Part Time Services	Clinical Laboratory Service
Coronary Care	Dental O/P	Emergency Department	Health Fairs O/P	Intensive Care
Maternity	Medical Social Services	Medical/Surgical	Neonatal Continuing Care	Neonatal Intermediate Care
Nuclear Medicine - Diagnostic	Pediatric	Pediatric O/P	Pharmaceutical Service	Podiatry O/P
Prenatal O/P	Primary Medical Care O/P	Psychiatric	Psychology O/P	Radiology - Diagnostic
Renal Dialysis - Acute	Therapy - Occupational O/P	Therapy - Physical O/P		

Other Authorized Locations:

Hospital

Faxton-St Lukes Healthcare Faxton Division
1676 Sunset Avenue
Utica, New York 13502

Hospital Extension Clinic

Barneveld Office
7980 Route 12
Barneveld, New York 13304

Boonville Medical Office
NY State 12
Boonville, New York 13309

F-SLH Oneida Dialysis Unit
221 Broad St
Oneida, New York 13421

F-SLH Regional Cancer Center Rome
91 Perimeter Road
Rome, New York 13341

Deputy Commissioner
Office of Health Systems Management

This certificate must be conspicuously displayed on the premises.

Commissioner

Facility Id. 599
Certificate No. 3202003H

State of New York
Department of Health
Office of Health Systems Management
OPERATING CERTIFICATE



Effective Date: 01/05/2009
Expiration Date: NONE

Hospital

Faxton-St Lukes Healthcare St Lukes Division
1656 Champlin Avenue
Utica, New York 13502

Operator: Faxton-St Lukes Healthcare
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Hospital Extension Clinic

FSLH-Herkimer Dialysis Unit
201 East State Street
Herkimer, New York 13350

FSLH-Masonic Dialysis Unit
2150 Bleeker Street
Utica, New York 13501

Middle Settlement Office
4301 Middle Settlement Road
New Hartford, New York 13413

Mohawk Valley Medical Office
201 East State St
Herkimer, New York 13350

North Utica Medical Office
35 Riverside Drive
Utica, New York 13502

SLMHC - Rome Dialysis Unit
91 Perimeter Road
Rome, New York 13441

Washington Mills Office
3946 Oneida Street
New Hartford, New York 13413

Waterville Office
358 Madison Street
Waterville, New York 13480

Whitesboro Office
37 Main Street
Whitesboro, New York 13492


Deputy Commissioner
Office of Health Systems Management

This certificate must be conspicuously displayed on the premises.


Commissioner

Facility Id. 597
Certificate No. 3202003H

Certified Beds - Total 26
Physical Medicine and Rehabilitation 26



Effective Date: 01/05/2009
Expiration Date: NONE

State of New York
Department of Health
Office of Health Systems Management
OPERATING CERTIFICATE

Hospital

Faxton-St Lukes Healthcare Faxton Division
1676 Sunset Avenue
Utica, New York 13502

Operator: Faxton-St Lukes Healthcare
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

- | | | | | |
|---------------------------------------|---|--|--|---|
| Ambulatory Surgery - Multi Speciality | Audiology O/P | Burns Care | Clinical Laboratory Service | Coronary Care |
| Dental O/P | Family Planning O/P | Health Fairs O/P | Home Hemodialysis Training and Support | Home Peritoneal Dialysis Training and Support |
| Intensive Care | Linear Accelerator | Medical Social Services | Nuclear Medicine - Diagnostic | Nuclear Medicine - Therapeutic |
| Pharmaceutical Service | Physical Medical Rehabilitation | Physical Medicine and Rehabilitation O/P | Primary Medical Care O/P | Radiology - Diagnostic |
| Radiology-Therapeutic | Renal Dialysis - Chronic (36) | Respiratory Care | Therapy - Occupational O/P | Therapy - Physical O/P |
| Therapy - Speech Language Pathology | Therapy - Vocational Rehabilitation O/P | | | |

Other Authorized Locations:

Hospital

Faxton-St Lukes Healthcare St Lukes Division
1656 Champlin Avenue
Utica, New York 13502

Hospital Extension Clinic

Barneveld Office
7980 Route 12
Barneveld, New York 13304

Boonville Medical Office
NY State 12
Boonville, New York 13309

F-SLH Oneida Dialysis Unit
221 Broad St
Oneida, New York 13421

F-SLH Regional Cancer Center Rome
91 Perimeter Road
Rome, New York 13341

Richard M. Cook

Deputy Commissioner
Office of Health Systems Management

This certificate must be conspicuously displayed on the premises.

Richard M. Cook

Commissioner

Facility Id. 597
Certificate No. 3202003H

State of New York
Department of Health
Office of Health Systems Management



OPERATING CERTIFICATE

Effective Date: 01/05/2009
Expiration Date: NONE

Hospital

Faxton-St Lukes Healthcare Faxton Division
1676 Sunset Avenue
Utica, New York 13502

Operator: Faxton-St Lukes Healthcare
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Hospital Extension Clinic

FSLH-Herkimer Dialysis Unit
201 East State Street
Herkimer, New York 13350

FSLH-Masonic Dialysis Unit
2150 Blecker Street
Utica, New York 13501

Middle Settlement Office
4301 Middle Settlement Road
New Hartford, New York 13413

Mohawk Valley Medical Office
201 East State St
Herkimer, New York 13350

North Utica Medical Office
35 Riverside Drive
Utica, New York 13502

SLMHC - Rome Dialysis Unit
91 Perimeter Road
Rome, New York 13441

Washington Mills Office
3946 Oneida Street
New Hartford, New York 13413

Waterville Office
358 Madison Street
Waterville, New York 13480

Whitesboro Office
37 Main Street
Whitesboro, New York 13492

Deputy Commissioner
Office of Health Systems Management

This certificate must be conspicuously displayed on the premises.

Commissioner

4

CERTIFICATE NO. 3227305N

PFI NO. 6057

CERTIFIED BEDS:

PERMANENT BED CAPACITY
RHCFC 242

State of New York Department of Health Office of Health Systems Management

EFFECTIVE DATE 01/06/05

RESIDENTIAL HEALTH CARE FACILITY

OPERATING CERTIFICATE

EXPIRATION DATE **NONE**

ST LUKE'S HOME

1650 CHAMPLAIN AVENUE

UTICA NY 13502



OPERATOR VOLUNTARY CORPORATION
ST LUKE'S HOME RHCFC INC

HAS BEEN GRANTED THIS OPERATING CERTIFICATE PURSUANT TO ARTICLE 20
OF THE PUBLIC HEALTH LAW FOR THE SERVICE(S) SPECIFIED:

BASELINE SERVICES

Pauline Trojer
HEALTH ADMINISTRATOR

Thomas C. Arnold
COMMISSIONER

FORM - 6028 (7/01)

THIS CERTIFICATE MUST BE CONSPICUOUSLY DISPLAYED ON THE PREMISES.

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State of New York
Department of Health
Office of Health Systems Management

EFFECTIVE DATE 07/06/09

HOME CARE SERVICE AGENCY
LICENSE

MOHAWK VALLEY HOME CARE, LLC
2521 SUNSET AVENUE
UTICA, NY 13502
ONEIDA COUNTY

GENERAL
LIMITED LIABILITY COMPANY

MOHAWK VALLEY HOME CARE, LLC
P.O. BOX 4909
UTICA, NY 13504

COUNTY(S) SERVED

HERKIMER
LEWIS
MADISON
ONEIDA

HAS BEEN GRANTED THIS LICENSE TO OPERATE PURSUANT TO ARTICLE 36
OF THE PUBLIC HEALTH LAW FOR THE HEALTH SERVICES SPECIFIED:

SERVICE

NURSING
RESPIRATORY THERAPY
MEDICAL SUPPLY EQUIP & APPL

Pauline Frasier
ALEX. ADMIRALTY

DOH 502K (3/07)

Ad. F. Davis M.D.
COMMISSIONER

THIS CERTIFICATE MUST BE CONSPICUOUSLY DISPLAYED ON THE PREMISES.

Facility Id. 1878
Certificate No. 3202602

State of New York
Department of Health
Office of Health Systems Management



CERTIFICATE OF AUTHORIZATION

Certified Home Health Agency

Visiting Nurse Association of Utica and Oneida County Inc
2608 Genesee St
Utica, New York 13502

Effective Date: 01/05/2009
Expiration Date: NONE

Operator: Visiting Nurse Association of Utica and Oneida County Inc
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 36 of the Public Health Law for the service(s) specified.

Home Health Aide	Medical Social Services	Medical Supplies Equipment and Appliances	Nursing	Nutritional
Therapy - Occupational	Therapy - Physical	Therapy - Respiratory	Therapy - Speech Language Pathology	

Geographic Service Area Counties Served - 1

Oneida

Deputy Commissioner
Office of Health Systems Management

This certificate must be conspicuously displayed on the premises.

Commissioner

20090522

001-04-2010 MON 11:53 AM VNA MEDICAL RECORDS

FAX NO. 315 624 8990

P. 02/05

Facility Id. 3055
Certificate No. 3202901L

Patient Capacity: 250

State of New York
Department of Health
Office of Health Systems Management



CERTIFICATE OF AUTHORIZATION

Long Term Home Health Care Program

Visiting Nurse Association of Utica and Oneida County Inc
2608 Genesee Street
Utica, New York 13502

Effective Date: 01/05/2009
Expiration Date: NONE

Operator: Visiting Nurse Association of Utica and Oneida County Inc
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Certificate of Authorization pursuant to Article 36 of the Public Health Law for the service(s) specified.

AIDS Home Care Program	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	

Geographic Service Area Counties Served - 1

Oneida (250)

Provision of services within specific counties is limited to those municipalities, unincorporated towns and villages, community districts or other defined catchments areas for which this provider has obtained Certificate of Need approval.

Deputy Commissioner
Office of Health Systems Management

This certificate must be conspicuously displayed on the premises.

Commissioner

New York State Department of Health

Office of Managed Care

Health Maintenance Organization Certificate of Authority

SENIOR NETWORK HEALTH, LLC

2541 Sunset Avenue
Utica, New York 13502

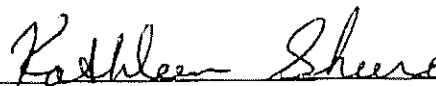
Effective Date

June 22, 2006

Has been granted this certificate of authority to operate
pursuant to Article 44 of the New York State Public Health Law

LIMITATION

SENIOR NETWORK HEALTH, LLC, is approved to operate a partial capitation Managed Long-Term Care plan serving the Medicaid population consistent with section 4403-f of New York State Public Health Law in Oneida and Herkimer Counties.



Kathleen Shure
Director
Office of Managed Care

ATTACHMENT C

**MVEC HOLDINGS, LLC
Documents**

ATTACHMENT C

Direct Ownership in MVEC Holdings, LLC and Indirect Ownership in Mohawk Valley EC, LLC (based on 60% ownership in Mohawk Valley EC, LLC)

<u>Member</u>	<u>Membership Interest MVEC Holdings, LLC</u>	<u>Indirect Ownership in Mohawk Valley EC, LLC</u>
Stanley P. Weiselberg, M.D.	14.2858%	8.57148%
Norman R. Neslin, M.D.	14.2857%	8.57142%
Robert R. Pavelock, M.D.	14.2857%	8.57142%
Bradley F. Sklar, M.D.	14.2857%	8.57142%
Richard Cherpak, M.D.	14.2857%	8.57142%
Garth J. Garramone, D.O.	14.2857%	8.57142%
Brett Gandhi, M.D.	<u>14.2857%</u>	<u>8.57142%</u>
	100.00000%	60.00000%

FILING RECEIPT

=====

ENTITY NAME: MVEC HOLDINGS, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ONEI

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FILED:09/29/2010 DURATION:***** CASH#:100929000626 FILM #:100929000579

FILER:

EXIST DATE

WOOD & SMITH, P.C.
ONE LINCOLN CENTER SUITE 1110

09/29/2010

SYRACUSE, NY 13202

ADDRESS FOR PROCESS:

THE LLC
110 BUSINESS PARK DRIVE
UTICA, NY 13502

REGISTERED AGENT:



=====

SERVICE COMPANY: NATIONWIDE INFORMATION SERVICES, INC. SERVICE CODE: 27 *

FEES	235.00	PAYMENTS	235.00
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FILING	200.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	235.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

=====

08C19185

DOS-1025 (04/2007)

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on September 30, 2010.

A handwritten signature in black ink, appearing to read "D. Shapiro", is written over the text area.

Daniel E. Shapiro
First Deputy Secretary of State

100929000 579

ARTICLES OF ORGANIZATION
OF
MVEC HOLDINGS, LLC


Under Section 203 of the Limited Liability Company Law

- 1. The name of the limited liability company is: MVEC Holdings, LLC
- 2. The office of the limited liability company is to be located in the County of Oneida, State of New York.
- 3. The Secretary of State is designated as agent of the limited liability company 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 limited liability company served upon the Secretary is:

c/o the Company
110 Business Park Drive
Utica, New York 13502

- 4. The limited liability company shall be managed by its members.
- 5. All members of the limited liability company shall be natural persons and this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.
- 6. Transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-(4)(b) of the Public Health Law and this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

IN WITNESS WHEREOF, these Articles of Organization have been subscribed to this 28th day of September 2010 by the undersigned who affirms that the statements made herein are true under the penalties of perjury:



Bruce A. Smith, Organizer
Wood & Smith, P.C.
One Lincoln Center, Suite 1110
110 West Fayette Street
Syracuse, New York 13202

SEP. 29. 2010 9:55AM

NO. 030 P. 4

100929000 579

ARTICLES OF ORGANIZATION

OF

MVEC HOLDINGS, LLC

Under Section 203 of the Limited Liability Company Law

RECEIVED
2010 SEP 29 AM 10:14

Filer: Wood & Smith, P.C.
One Lincoln Center, Suite 1110
110 West Fayette Street
Syracuse, New York 13202

Ref. #08C19185

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 29 2010
TAX \$
BY: *[Signature]*

DRAWDOWN
NIS-27

FILED
2010 SEP 29 PM 1:58

[Handwritten initials]

**OPERATING AGREEMENT
OF
MVEC HOLDINGS, LLC**

THIS OPERATING AGREEMENT is entered into on October 6, 2010 by and among STANLEY P. WEISELBERG, M.D., NORMAN R. NESLIN, M.D., ROBERT R. PAVELOCK, M.D., BRADLEY F. SKLAR, M.D., RICHARD CHERPAK, M.D., GARTH J. GARRAMONE, D.O., BRETT GANDHI, M.D. and MVEC HOLDINGS, LLC (the "Company").

In consideration of the mutual promises contained herein the parties hereby agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Companies Law, as the same may be amended from time to time.
- 1.2. "Additional Funding Requirement" shall mean additional funds called pursuant to Section 4.2 hereof.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 4.5 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the single-specialty ambulatory surgery center specializing in gastroenterology located at 116 Business Park Drive, Utica, New York 13502 owned and operated by Mohawk Valley EC, LLC.
- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean MVEC Holdings, LLC, a New York limited liability company and its successors.
- 1.10. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP or its successors.
- 1.11. "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.

- 1.12. "Initial Capital Contributions" shall mean the Capital Contributions to be made by the Members as provided in Section 4.1.
- 1.13. "Majority Vote of the Members" shall mean the affirmative vote of a majority of all Members.
- 1.14. "Member" shall mean Stanley P. Weiselberg, M.D., Norman R. Neslin, M.D., Robert R. Pavelock, M.D., Bradley F. Sklar, M.D., Richard Cherpak, M.D., Garth J. Garramone, D.O., Brett Gandhi, M.D. and such other Persons who are admitted to the Company as additional or substitute Members.
- 1.15. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and any right to vote or participate in management of the Company.
- 1.16. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.17. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.18. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.19. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704 2(i)(3) of the Treasury Regulations.
- 1.20. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.
- 1.21. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.22. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.23. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.24. "Supermajority Vote of the Members" shall mean the affirmative vote of a number of Members equal to the total number of Members minus two.

- 1.25. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or any part of a Member's Membership Interest.
- 1.26. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.27. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 7.1 hereof.
- 2.2. Name. The name of the Company shall be "MVEC Holdings, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed to (a) own a membership interest in, and to be the Managing Member of Mohawk Valley, EC, LLC and (b) carry on, conduct or transact any business or other activities which a limited liability company formed under the Act may carry on, conduct or transact.

3. MEMBERS; MANAGEMENT OF COMPANY

- 3.1. Membership Interest. The number of Units of Membership Interest owned by each Member and their respective Sharing Ratios is set forth on Exhibit A attached hereto.
- 3.2. Membership Qualifications.
- a. Members shall be natural persons. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**
 - b. Members shall be current or former partners or physician employees of DDM.
- 3.3. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.
- 3.4. Management of the Company. The business and affairs of the Company shall be managed by the Members. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**

3.5. Action by Members.

- a. For voting purposes each Member shall have one vote.
- b. The following actions shall require a Supermajority Vote of the Members: (i) adopt, amend, restate or revoke the Articles of Organization or this Agreement; (ii) approve the dissolution of the Company; (iii) approve the sale, exchange or lease of all or substantially all of the Company's assets; (iv) make a call for Additional Funds under Section 4.2 or require the delivery of personal guaranties under Section 4.4; (v) borrow money or incur expenses in excess of \$50,000; (vi) approve a merger or consolidation of the Company with any other entity; or (vii) admit a new Member.
- c. Except as provided in subsection (b) above or as otherwise required under this Agreement, all other decisions of the Company shall require a Majority Vote of the Members.
- d. No act of a Member shall bind the Company unless such act has been authorized by a sufficient vote of Members as set forth in this Section.

3.6. Action by Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by Members whose voting power is sufficient to authorize such action.

4. **CAPITAL CONTRIBUTIONS**

- 4.1. Initial Capital Contributions. Each Member shall make an Initial Capital Contribution to the Company in the amount set forth on Exhibit A at times and in increments amounts as directed by a Majority Vote of the Members in order to fund the Company's capital contribution obligation to Mohawk Valley EC, LLC.
- 4.2. Additional Funding Requirement. If the Members by a Supermajority Vote of the Members determine that the Company requires additional funds, such funds shall be contributed by the Members in proportion to their Sharing Ratios within 10 days following the date of the call ("Additional Funds"). At the direction of the Members such Additional Funds shall either be in the form of a loan or Capital Contribution to the Company. For purposes of this Agreement, Additional Funds called for under this Section shall be referred to as the "Additional Funding Requirement."
- 4.3. Remedies for Failure to Fund. If any Member shall fail to pay his Initial Capital Contribution or Additional Funding Requirement when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 30 days in which to cure such default. If, after 30 days, the Defaulting Member has not cured such default, then upon a Majority Vote of the Members (excluding the Defaulting Member), the Company may (a) exercise its Right of Termination under Section 6.6; (b) apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) enforce the Defaulting Member's obligation to pay his Initial Capital Contribution or Additional Funding Requirement and recover attorneys' fees and costs of collection in addition to interest at 15% per

annum accruing from the date the Capital Contribution or Additional Funding Requirement was first required to have been paid.

4.4. Personal Guaranties.

- a. Each Member shall execute and deliver one or more guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center (a "Member Guaranty"). If any Member shall fail to deliver his Member Guaranty within 10 days following request, the Company may (a) redeem the Membership Interest of the Defaulting Member for \$1.00 and seek damages against the Defaulting Member or (b) enforce the Member's obligation to deliver his Member Guaranty and recover attorneys' fees.
- b. In the event one or more Members who have delivered a Member Guaranty pays in excess of his share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection. A Member who is not required to deliver a personal guaranty shall not be considered a Nonpaying Member hereunder.

4.5. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.

4.6. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.

4.7. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

- 4.8. Assignment of Membership Interests in Mohawk Valley EC, LLC to the Company. The Members own, in the aggregate, 100% of the membership interest in Mohawk Valley EC, LLC (the "MVEC Membership Interests"). The Members hereby assign to the Company, effective on the date hereof, all of their right, title and interest in and to the MVEC Membership Interests and the Company hereby accepts such assignment.

5. ALLOCATIONS AND DISTRIBUTIONS

- 5.1. Allocation of Net Profits and Net Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.
- 5.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.3. Distributions. Net available cash flow of the Company shall be distributed to the Members at such times and in such amounts as the Members shall determine.
- 5.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 5.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 5.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 5.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 5.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.

- 5.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.
- 5.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.
- 5.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 5.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 5.14. Records, Audits, and Reports. The Company shall maintain records and accounts of all operations and expenditures of the Company.
- 5.15. Returns and Other Elections. The Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Members.

6. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 6.1. Restriction Against Withdrawal. Except as otherwise provided in this Agreement, no Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 6.2. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by a Supermajority Vote of the Members; (b) the proposed transferee satisfies all membership criteria; and (c) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation,

reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:

- a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law. **This provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.**
 - b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
 - c. The transferee shall have adopted and approved in writing this Agreement.
 - d. Except for the right to receive allocations of Net Profits and Net Losses and to receive distributions, a transferee of a Membership Interest shall not have a right to become a Member unless approved by a Supermajority Vote of the Members.
- 6.3. Transferee Not a Member. Notwithstanding anything to the contrary contained in this Agreement, no Person acquiring all or a portion of a Membership Interest shall become a Member unless such person is approved by a Supermajority Vote of the Members.
- 6.4. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.
- 6.5. Termination of Membership; Involuntary Withdrawal. The Company shall have the right, which may be exercised at the Company's sole discretion, to terminate the membership of a Member under the circumstances described below (the "Right of Termination"). A termination of a Member's membership under this Section shall be considered an involuntary withdrawal from the Company by such Member. If the Company elects to exercise its Right of Termination, the Company shall provide written notice of such election to the affected Member (the "Terminated Member"), which notice shall set forth the date on which the membership has terminated or will terminate (the "Termination Date"). Effective on the Termination Date, without any further action required by the Terminated Member or the Company (a) the Terminated Member shall cease being a Member of the Company and shall have no further rights under this Agreement except the right to receive a Withdrawal Payment as provided in Section 6.5 hereof and (b) the Terminated Member's Membership Interest, and all rights therein, shall automatically transfer to the Company. A Majority Vote of the Members shall be required to cause the Company to exercise its Right of Termination under this Section.
- a. Right to Terminate if Member Ceases to be a DDM Partner or Employee. If a Member ceases to be a partner or employee of DDM the Company shall have a continuing right to exercise its Right of Termination with respect to such Member. The Termination Date shall be the date

the Member's partnership or employment with DDM terminated or the date he ceased to be a DDM partner or employee, unless a later date is set by the Company. If a Member elects to voluntarily withdraw as a partner of DDM, the Company may exercise its Right of Termination at any time on or after the date on which such Member first notified DDM of his intent to withdraw.

- b. Right to Terminate on Other Events. The Company shall have a continuing right to exercise its Right of Termination with respect to any Member who (i) has been adjudicated a bankrupt, voluntary or involuntary; (ii) has made an assignment for the benefit of creditors; (iii) has applied for a judicial dissolution of the Company under the Act; (iv) is ineligible to own an interest in an Article 28 ambulatory surgery facility; or (v) defaults under this Agreement, which default is not cured within 30 days following written notice.
- 6.6. Withdrawal Payment to Terminated Member. A Member whose membership has been terminated under Section 6.4 shall be entitled to receive a Withdrawal Payment which represents payment for the Member's Membership Interest. The Withdrawal Payment shall be paid within 90 days following the Termination Date (the "Payment Date"). The Withdrawal Payment shall be calculated pursuant to Section 6.7 and paid pursuant to Section 6.8.
- 6.7. Amount of Withdrawal Payment. The Withdrawal Payment shall be determined by multiplying the Company's Adjusted Book Value by the Terminated Member's Sharing Ratio. As used herein, "Adjusted Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Termination Date. Adjusted Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:
- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
 - b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
 - c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
 - d. The Company shall include as an asset 95% of the value of its accounts receivable calculated by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period;
 - e. If the Terminated Member had been a Member of the Company for at least four years following the date the Center began commercial operations, the Company shall also include as an asset a goodwill component (the "Goodwill Component") in an amount equal to one times (1x) the average of the Company's annual net operating income (in accordance with

generally accepted accounting principles), excluding extraordinary gains and losses, calculated before deduction of interest, taxes, depreciation and amortization for the most recent two fully completed prior calendar years; and

- f. If the Company has exercised its Termination Right for any of the reasons set forth in Section 6.4(b)(iii), (iv) or (v), the Withdrawal Payment (i) shall not include the Goodwill Component and (ii) shall be reduced by 30%.

6.8. Payment of Withdrawal Payment. The Company shall pay (a) 20% of the Withdrawal Payment by business check on the Payment Date and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the first payment is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 60 equal consecutive monthly installments of principal and interest commencing 90 days following the Payment Date. The promissory note shall be unsecured and shall provide that in case of default all principal and accrued interest shall become immediately due and payable at the holder's election. The Company shall have the right to set off any amounts owing by the Terminated Member to the Company against the Withdrawal Payment. Notwithstanding the terms of the promissory note, the Company, by a Supermajority Vote of the Members, may defer all or a part of the payments due thereunder if such payments, combined with Withdrawal Payments owing by the Company to other Terminated Members, exceed 25% of the Company's net cash flow available for distribution on an annual basis. All deferred payments shall accrue interest at 10% per annum and shall be paid in full not later than two years following the original maturity date of the promissory note.

6.9. Release of Personal Guaranties. If the Terminated Member signed any personal guaranty on behalf of the Company, the Company shall use its best efforts to obtain a release of such guaranty(ies). If the Company is unable to obtain a release, the Company and the remaining Members shall indemnify the Terminated Member against any liability arising out of such guaranty.

7. DISSOLUTION AND TERMINATION

7.1. Dissolution of the Company. The Company may be dissolved by a Supermajority Vote of the Members.

7.2. Procedure on Liquidation. Upon the dissolution of the Company, the Members shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 7.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.

7.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:

- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
- b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;
- c. Third, to Members in accordance with their positive Capital Account balances.

8. INDEMNIFICATION

8.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company may maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

8.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 8.1.

9. DISPUTE RESOLUTION

9.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

10. GENERAL PROVISIONS

10.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.

10.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.

10.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

10.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.

10.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.

10.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.

10.7. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.

- 10.8. Waiver of Action for Partition. Each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 10.9. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.
- 10.10. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 10.11. Agreement Prepared by Attorney for Company. The parties each agree that the Company's counsel has prepared this Agreement in the course of its representation of the Company and not as counsel to any individual Member. The Company's counsel has advised the Company that interests of the Members may be adverse in certain circumstances. By its signature below, each Member confirms that he has either obtained the advice of separate counsel with respect to this Agreement or has independently evaluated the need for separate counsel and has knowingly elected not to retain same.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

Stanley P. Weiselberg, M.D.

Norman R. Neslin, M.D.

Robert R. Pavelock, M.D.

Bradley F. Sklar, M.D.

Richard Cherpak, M.D.

Garth J. Garramone, D.O.

Brett Gandhi, M.D.

MVEC HOLDINGS, LLC

By: _____
Member

EXHIBIT A

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
Stanley P. Weiselberg, M.D. [REDACTED]	[REDACTED]	100	14.2858%
Norman R. Neslin, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Robert R. Pavelock, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Bradley F. Sklar, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Richard Cherpak, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Garth J. Garramone, D.O. [REDACTED]	[REDACTED]	100	14.2857%
Brett Gandhi, M.D. [REDACTED]	[REDACTED]	100	14.2857%

ATTACHMENT D

Schedule 2A, 2B and 2C
(as applicable for each member)

LIST OF MEMBERS

SCHEDULE 2

MVEC HOLDINGS, LLC (60% MEMBER)

Richard Cherpak, M.D.

Brett Gandhi, M.D.

Garth Garramone, M.D.

Stanley Weiselberg, M.D.

Norman Neslin, M.D.

Robert Pavelock, M.D.

Bradley Sklar, M.D.

(NOTE: These physicians were part of the original CON and have already been reviewed for Character and Competence)

Schedule 2A - Personal Qualifying Information

Name of Individual:

RICHARD M. CHERPAK, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
<i>CHERPAK</i>		<i>RICHARD</i>		<i>M.</i>
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
<i>DIGESTIVE DISEASE MEDICINE OF NY, LLP</i> <i>110 BUSINESS PARK DRIVE</i>				
CITY	STATE	ZIP CODE	TELEPHONE	
<i>UTICA</i>	<i>NY</i>	<i>13502</i>	<i>(315) 624-7000</i>	
DATE OF BIRTH (Month/Day/Year)	PLACE OF BIRTH (County/State)		Social Security #	
[REDACTED]	[REDACTED]		[REDACTED]	
RELATIONSHIP WITH PROPOSED ORGANIZATION				
<i>OWNER - PARTNER</i>				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
<i>CORNELL UNIVERSITY</i>	<i>ITHACA NY</i>			<i>BA CHEMISTRY</i>	<i>05/84</i>
<i>SUNY @ BROOKLYN PELLUMI RESEARCH SERVICES</i>	<i>BROOKLYN, NY</i>	<i>1985</i>	<i>1986</i>	<i>MS PUBLIC HEALTH</i>	<i>1986</i>
<i>NATIONAL INSTITUTE OF HEALTH RESEARCH FELLOWSHIP</i>				<i>"</i>	<i>1985</i>
<i>STATE UNIVERSITY OF NEW YORK HEALTH SCIENCE CENTER @ BROOKLYN</i>	<i>BROOKLYN NY</i>			<i>MD</i>	<i>05/88</i>

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD/CARDIOVASCULAR	THE UNIVERSITY OF THE STATE OF NY EDUCATION DEPARTMENT TEL: (516) 474-3817 EXT 410 EMAIL: UPK6100@CAMPUS.MYSDA.EDU		11/30/2010
#185866-1			

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

2/1 a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

111 (c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED UROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS AS WELL, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPMENT AND OPERATIONS OF OUTPATIENT CLINICS. IN ADDITION I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF MY OWN PRIVATE MEDICINE & CONSULTING GROUP, LLC AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF MY MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is 'Yes,' complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
<i>SEE ENCLOSED CLAIMS HISTORY</i>		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

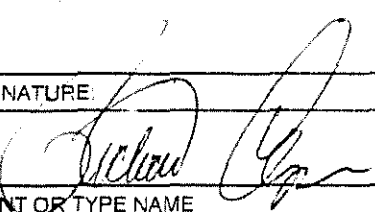
New York State Department of Health
 Certificate of Need Application

Schedule 2A

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

--

The undersigned hereby certifies under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X 	11/11/09
PRINT OR TYPE NAME	
RICHARD CHENPAK, MD	
TITLE	

NOTARY	DATE
	11/11/09

Has the original of this document been signed and notarized? Yes No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/20 10

RICHARD M. CHERPAK, M.D.



PROFESSIONAL EXPERIENCE

Group Practice, 1993–Present
Consultation, Endoscopy including ERCP and Nutritional Support.
Chairman, Endoscopy Committee, Faxton-St. Luke's Hospital, 2003–Present

LICENSURE AND CERTIFICATION

Diplomate American Board of Internal Medicine - Gastroenterology, September 1993, Recertification 2003
Diplomate American Board of Internal Medicine, September 1991, Recertification 2001
Diplomate National Board of Medical Examiners (#364 105), July 1989
New York State Licensure (#185866)

POSTGRADUATE TRAINING

THE LONG ISLAND COLLEGE HOSPITAL, Brooklyn, NY
Gastroenterology Fellowship: July 1991–June 1993
Board Eligible upon completion of fellowship, 1993

**STATE UNIVERSITY OF NEW YORK
HEALTH SCIENCE CENTER AT STONY BROOK**, Stony Brook, NY
Internal Medicine Residency: July 1988–June 1991

EDUCATION

**STATE UNIVERSITY OF NEW YORK
HEALTH SCIENCE CENTER AT BROOKLYN**, Brooklyn, NY
M.D., May 1988

Honors:

National Institute of Health Research Fellowship, 1985. Awarded to students for independent research in biochemistry.

S.U.N.Y. Health Science Center at Brooklyn Alumni Research Stipend, 1985–1986. Awarded for research completed in biochemistry.

CORNELL UNIVERSITY, Ithaca, NY
B.A. Chemistry, May 1984

Honors:

Phi Beta Kappa
Alpha Lambda Delta Honor Society
Laubengayer Award - Awarded to outstanding student in advanced chemistry.
Research in Physical Chemistry
Dean's List - 6 Semesters

PROFESSIONAL ORGANIZATIONS

Member, American College Gastroenterology
Member, American Gastroenterology Association
Member, American College Of Physicians
Member, American Medical Association

REFERENCES

Available upon request

Schedule 2A - Personal Qualifying Information

Name of Individual:

BRETT R. GANDHI, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
<i>GANDHI</i>		<i>BRETT</i>		<i>R.</i>
STREET ADDRESS				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
<i>GASTROINTESTINAL DISEASE MEDICINE OF CNY, LLP 110 BUSINESS PARK DRIVE</i>				
CITY	STATE	ZIP CODE	TELEPHONE	
<i>UTICA</i>	<i>NY</i>	<i>13502</i>	<i>(315) 624-7000</i>	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
<i>OWNER - PARTNER</i>				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
<i>UNIVERSITY OF BOMBAY</i>	<i>BOMBAY, INDIA</i>			<i>BS MICROBIOLOGY</i>	<i>1971</i>
<i>UNIVERSITY OF SOUTHWESTERN LOUISIANA</i>	<i>LAFAYETTE, LOUISIANA</i>			<i>MS MICROBIOLOGY</i>	<i>1976</i>
<i>UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL</i>	<i>CHAPEL HILL, NORTH CAROLINA</i>			<i>MS CYTODIAGNOSIS</i>	<i>1984</i>
<i>UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL</i>	<i>CHAPEL HILL, NORTH CAROLINA</i>			<i>MD</i>	<i>1989</i>

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD / CARDIOVASCULAR MED	THE UNIVERSITY OF THE STATE OF NY EDUCATION & PROFESSIONS		02/28/2011
# 183530-1	TEL: (518) 474-3877 EXT 410 EMAIL: DIRECTOR@CEPHAN.NYSEA.GOV		

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

2/1 a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

11(c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED DENTURIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS AS WELL, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT ENDOSCOPY. IN ADDITION I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF NURSING ASSISTANT MEDICINE IN SEVERAL NEW YORK LLC AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THAT MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
<i>SEE ATTACHED CHARTS HISTORY</i>		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

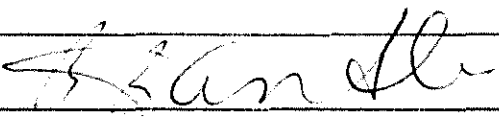
New York State Department of Health
Certificate of Need Application


Schedule 2A

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>If "Yes", provide details below</p>	

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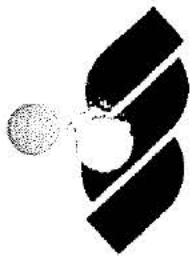
The undersigned hereby certifies under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X 	11/10/09
PRINT OR TYPE NAME	
L. B. GANDINI	
TITLE	

NOTARY	DATE
	11/10/09

Has the original of this document been signed and notarized? Yes No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/20 13



DIGESTIVE
DISEASE
MEDICINE
OF CENTRAL NEW YORK

110 Business Park Dr
Utica, NY 13502
(315) 624-7000
FAX (315) 793-1129

301 Genesee St
Oneida, NY 13421
(315) 363-9183
FAX (315) 361-1093

Curriculum Vitae

BRETT R. GANDHI, M. D.

Personal Information

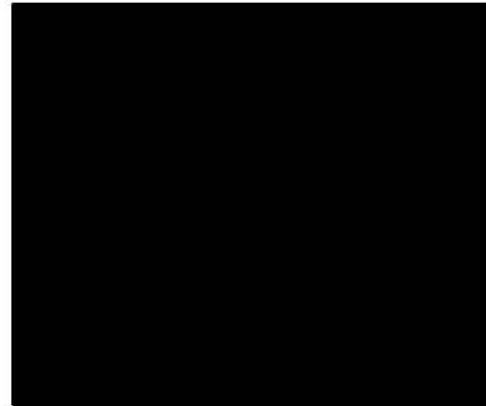
Date of Birth:

Place of Birth:

Citizenship:

Marital Status:

Business Address:



Digestive Disease Medicine of Central New York
110 Business Park Drive
Utica, New York 13502
315-624-7000

Academic Training

1959

M.D.
University of North Carolina at Chapel Hill
Chapel Hill, North Carolina

1984

M.S. in Experimental Pathology
University of North Carolina at Chapel Hill
Chapel Hill, North Carolina

1976

M.S. in Microbiology
University of Southwestern Louisiana
Lafayette, Louisiana

1971

B.S. in Microbiology
University of Bombay
Bombay, India

Licensure

New York State - 183530
New Hampshire - inactive

Continued . . .

Traineeship

- | | |
|-------------|--|
| 1992 - 1994 | Fellowship in Gastroenterology
Strong Memorial Hospital, University of Rochester
Rochester, New York |
| 1989 - 1992 | Residency in Internal Medicine and Primary Care
University of Rochester
Rochester, New York |

Board Qualifications

- | | |
|------|--|
| 1993 | American Board of Internal Medicine |
| 1998 | American Board of Internal Medicine - Gastroenterology |
| 2003 | American Board of Internal Medicine - Recertification (completed in June 2002) |

Appointments

- | | |
|-------------------------|---|
| January 2003 to present | Gastroenterology Practice
Digestive Disease Medicine of Central New York
301 Genesee Street
Oneida, New York |
| 1999 - 2002 | Attending Physician
Digestive Diseases Unit
Bassett Healthcare
1 Atwell Road
Cooperstown, New York |
| 1999 | New Hampshire Gastroenterology, Inc.
Manchester, New Hampshire |
| 1994 - 1998 | Center for Gastrointestinal Medicine
Manchester, New Hampshire |
| 1985 - 1988 | Medical Technologist
Durham County General Hospital
Durham, North Carolina |

Continued.....

Page 3
Curriculum Vitae
Brett R. Gandhi, M. D.

Appointments - continued:

1978 - 1985 Research Assistant
University of North Carolina at Chapel Hill
Chapel Hill, North Carolina

Research

Gandhi and Walker: Detection of Rickettsial Antigen in Urine of Experimentally-Infected Guinea Pigs and in Patients Infected with Rickettsia. Student Research Presentation, University of North Carolina, Chapel Hill, North Carolina.

Organizations & Societies

American College of Gastroenterology
American Society for Gastrointestinal Endoscopy

Committees

Blood Transfusion Committee
Operative and Invasive Procedure Committee

Schedule 2A - Personal Qualifying Information

Name of Individual:

BARBARA J. GARRAMONE, M.D.

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
<i>GARRAMONE</i>		<i>BARBARA</i>		<i>J</i>
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
<i>DIGESTIVE DISEASE MEDICINE OF CNY, LLP</i> <i>110 BUSINESS PARK DRIVE</i>				
CITY	STATE	ZIP CODE	TELEPHONE	
<i>UTICA</i>	<i>NY</i>	<i>13502</i>	<i>(518) 624-7000</i>	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
<i>OWNER - PARTNER</i>				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
<i>HAMILTON COLLEGE</i>	<i>CLINTON, NY</i>	<i>1988</i>	<i>1990</i>		
<i>UTICA COLLEGE OF SYRACUSE UNIVERSITY</i>	<i>UTICA, NY</i>	<i>1990</i>	<i>1992</i>	<i>B.S. ECONOMICS HUMAN SERVICES</i>	<i>1992</i>
<i>WILLIAM M. SCHWAB COLLEGE OF PODIATRIC MEDICINE</i>	<i>CHICAGO, IL</i>	<i>1992</i>	<i>1993</i>		<i>1993</i>
<i>UNIVERSITY OF NEWENHAWK - COLLEGE OF OSTEOPATHIC MEDICINE</i>	<i>BIBBICOM, ME</i>	<i>1993</i>	<i>1997</i>	<i>D.O.</i>	<i>1997</i>

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
DO/GASTROENTEROLOGY	THE UNIVERSITY OF THE STATE OF NY EDUCATION DEPARTMENT		08/31/2011
# 217231-1	TEL: (518) 474-3811 EXT 410 EMPLOYEE DEVELOPMENT DIVISION		

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

1/1 b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

111 (c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS AS SUCH, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT ENDOSCOPY. IN ADDITION I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF GASTROENTEROLOGY MEDICINE IN CENTRAL NEW JERSEY AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF CHART MONITOR PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
<i>SEE MALPRACTICE CLAIMS HISTORY ATTACHED</i>		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

New York State Department of Health
 Certificate of Need Application

Schedule 2A

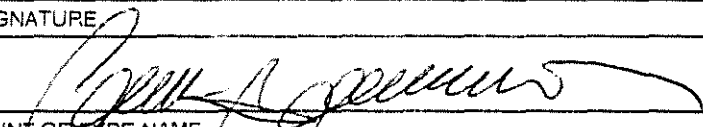
<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If "Yes", provide details below</p>	


New York State Department of Health
Certificate of Need Application

Schedule 2A

--

The undersigned hereby certifies under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X 	10/15/09
PRINT OR TYPE NAME	
Earth Carrandine	
TITLE	

NOTARY	DATE
	10/15/09

Has the original of this document been signed and notarized?

Yes

No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/20 10

Curriculum Vitae

Dr. Garth J. Garramone

CURRENT STATUS:

Currently Partner/Owner: Digestive Disease Medicine of Central New York, Utica, NY.
Licensed to practice medicine in the state of New York.
Board certified in Internal Medicine; August of 2000.
Board certified in Gastroenterology; November 2003.

FELLOWSHIP TRAINING:

2000-2003: Fellowship in Gastroenterology at Nassau University Medical Center, East Meadow, NY; major affiliate of SUNY Stony Brook Medical School and Lenox Hill Hospital.

RESIDENCY TRAINING:

1998-2000: Residency in Internal Medicine; University of Massachusetts/Memorial Hospital, Worcester, MA.

1997-1998: Medical Internship; University of Massachusetts/Memorial Hospital, Worcester, MA.

EDUCATIONAL BACKGROUND:

1993-1997: University of New England College of Osteopathic Medicine, Biddeford, ME.: *D.O. Degree.*

1992-1993: William M. Scholl College of Podiatric Medicine, Chicago, IL.

1990-1992: Utica College of Syracuse University, Utica, NY. BS in Human Studies/Economics.

1988-1990: Hamilton College, Clinton, NY.

RESEARCH/PUBLICATIONS:

Papers

Endoscopic Ultrasound Findings in Esophageal Intramural Pseudodiverticulosis. Garth J. Garramone, D.O., David I. Weltman, M.D., Marcio Curvelo, M.D., Carylann Hadjiyane, M.D., Crescens Pellecchia, M.D., Ali Karakurum, M.D., Nassau University Medical Center, East Meadow, NY. *Paper Accepted to Gastrointestinal Endoscopy January 2003.*

Poster Presentations

Gastrointestinal Histoplasmosis Involving the Stomach and Colon defining a patient with AIDS.

Garth J. Garramone, DO, Daniel Freese, DO, Carylann Hadjiyane, MD, Crescens Pellecchia, MD, Ali Karakurum, MD. Nassau University Medical Center, East Meadow, NY. *Presented at The American College of Gastroenterology 67th Annual Scientific meeting, October 2002. Seattle, Washington.*

Superior Mesenteric Artery Vasculitis as a cause of abdominal pain in a patient with Systemic Lupus Erythematosus.

Garth J. Garramone, DO, Omer Masood, MD, Crescens Pellecchia, MD. Nassau University Medical Center, East Meadow, NY. *Presented at The American College of Gastroenterology 66th Annual Scientific Meeting, October 2001. Las Vegas, Nevada.*

Curriculum vitae pg. 2.
Garth J. Garramone, DO

Poster Presentations-continued

Toxic methemoglobinemia induced by topical benzocaine spray application during endoscopy.
Ali S. Karakurum, MD, Carylann Hadjiyane, MD, Garth J. Garramone, DO, Imran Zaffer, MD, Crescens Pellecchia, MD.
Nassau University Medical Center, East Meadow, NY. Presented at The American College of Gastroenterology 66th Annual Scientific Meeting, October 2001. Las Vegas, Nevada.

Subhepatic Abscess from a spilled gallstone 2.5 years after laparoscopic cholecystectomy.
Garth J. Garramone, DO, Christopher Elsyad, MD, Carylann Hadjiyane, MD, Crescens Pellecchia, MD, Ali Karakurum, MD.
Nassau University Medical Center, East Meadow, NY. Presented at The American College of Physicians New York Downstate Scientific Meeting, March 16th, 2002. New York, NY.

Abstracts Published

Endoscopic Ultrasound of Esophageal Intramural Pseudodiverticulosis.
Garth J. Garramone, DO, Chand Mathur, MD, David I. Weitman, MD, Carylann Hadjiyane, MD
Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology, September 2001, vol. 96, s14.

Hepatic Hydrothorax confirmed by technetium scan before TIPS placement in a cirrhotic patient.
A. Shehata, MD, Garth J. Garramone, DO, Carylann Hadjiyane, MD, Ali S. Karakurum, MD, Crescens Pellecchia, MD,
Published in The American Journal of Gastroenterology, September 2001, vol. 96, s258.

Superior Mesenteric Artery vasculitis as a cause of abdominal pain in a patient with Systemic Lupus Erythematosus.
Garth J. Garramone, DO, Omer Masood, MD, Crescens Pellecchia, MD. Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology, September 2001, vol. 96, s200.

Subhepatic abscess from a spilled gallstone 2.5 years after laparoscopic cholecystectomy.
Garth J. Garramone, DO, Carylann Hadjiyane, MD, Ahmed Shehata, MD, Crescens Pellecchia, MD.
Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology September 2001, vol. 96, s121.

Toxic methemoglobinemia induced by topical benzocaine application during endoscopy.
Ali S. Karakurum, MD, Carylann Hadjiyane, MD, Garth J. Garramone, MD, Imran Zaffer, MD, Crescens Pellecchia, MD
Published in The American Journal of Gastroenterology, September 2001, vol. 96, s257.

Awards

2003 FELLOW OF THE YEAR; Nassau University Medical Center, East meadow, LI, NY

ORGANIZATIONS AND COMMITTEES

American College of Gastroenterology

American Gastroenterology Association

Medical Society of Central New York

American College of Physicians

Credentials Committee Faxton-St. Lukes Healthcare 2008

Dysphagia Guidelines Committee Faxton-St. Lukes Healthcare 2005

TEACHING

Lecturer: Critical Care Conference of Central New York; Gastrointestinal Emergencies 2005-2008

Active in teaching Medical Students and Family Practice Residents on their GI rotations with me. Students from UNECOM and St. Elizabeth Family Practice Program.

Guest Lecturer in Central New York Colon Cancer Awareness Program 2009

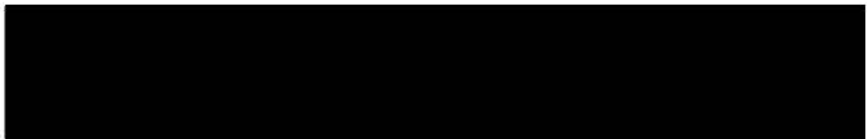
COMMUNITY/INTERESTS

Sponsor for Upstate Cerebral Palsy

Sponsor/Donations to the House of the Good Sheppard

Sponsor Mohawk Valley Blues Society 2007

Operation Sunshine for under privileged children



CONTINUING MEDICAL EDUCATION

Currently enrolled in the ABIM continuing medical education and board recertification program. 120 CME credits.

2009: Practical Reviews in Gastroenterology. 30 CME credits.

2008: ACG Annual PostGraduate course and Meeting. Orlando, FL. 16 CME credits.

2007: ACG Annual Post Graduate course and Meeting, Philadelphia, PA. 16 CME credits.

2002: ACG Annual PostGraduate course and Board Review. Seattle, WA. 16 CME credits.

2001: ACG Annual PostGraduate course and Board Review. Las Vegas, NV. 16 CME credits.

2007: MKSAP 13-90 CME credits.

2008: Mayo Clinic Gastroenterology and Hepatology Board Review. 29.5 CME credits.

2007: ACG update and recertification course. 4 CME credits.

2005-2008: Practical Reviews in Gastroenterology/CME only. 57 CME credits.

2005: MLMIC Risk Management Course. 6 CME credits.

2005-2007: UptoDate. 24.25 CME credits.

2001: Update in Gastroenterology, Hepatology and Nutrition. 18th Annual Course, Columbia Presbyterian Hospital. 16 CME credits.

2002: Recent Advances in HCV therapy: A Specialists Perspective. Garden City, NY. 6 CME credits.

2002: William Steinberg Board Review Course in Gastroenterology. Arlington, Virginia. 29 CME credits.

2002: New York Society for Gastrointestinal Endoscopy Hands-On Course in Endoscopy. New York, New York. 6 CME credits.

2003: Endoscopic Workshop in Therapeutic and Diagnostic ERCP. New York, New York. 6 CME credits.

Schedule 2A - Personal Qualifying Information

Name of Individual

Stanley P Weislerberg, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
WEISLERBERG		STANLEY		P
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
ADDISONS DISCOURSE MEDICINE OF NY, LLC 110 BUSINESS PARK DR				
CITY	STATE	ZIP CODE	TELEPHONE	
ELIZABETH	NY	13502	(315) 624-7000	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
OWNER / PARTNER				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
UNIVERSITY OF PENNSYLVANIA	PHILADELPHIA PA			BACHELOR OF ARTS	1972
NEW YORK UNIVERSITY SCHOOL OF MEDICINE	NEW YORK, NY			DOCTOR OF MEDICINE	1979

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD/GASTROENTEROLOGY	THE UNIVERSITY OF NYS EDUCATION DEPARTMENT		11/30/09
# 143482-1	89 WASHINGTON ST ALBANY, NY 12234-1000		
	EMAIL: OPENOFFICE MAIL NYS@S.DOH PHONE: (518) 474-3877 EXT. 410		

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT		FROM	TO:
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

2/11 a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

14/11 (c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED DENTIST/ENDODONTIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS AS SUCH, I HAVE HAD INVOLVEMENT WITH THE STAFFING EVALUATION AND OPERATIONS OF OUTPATIENT WHOLESOME. IN ADDITION I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF NINE STATE LICENSED MEDICAL GROUPS, LLC AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THAT MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
See endor.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

New York State Department of Health
 Certificate of Need Application

Schedule 2A

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If "Yes", provide details below</p>	

--

The undersigned hereby certifies under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X <i>Stanley Weisberg</i>	10/7/09
PRINT OR TYPE NAME	
Stanley Weisberg MD	
TITLE	

NOTARY	DATE
<i>[Signature]</i>	10/7/09

Has the original of this document been signed and notarized? Yes No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/20 10

Curriculum Vitae

STANLEY P. WEISELBERG, M.D.

Business Address: Digestive Disease Medicine
110 Business Park Drive
Utica, NY 13502

PRESENT APPOINTMENTS:

Active Staff; Faxton Hospital, Utica, N.Y.
Active Staff; St. Elizabeth Medical Center, Utica, N.Y.
Active Staff; St. Luke's Memorial Hospital Center, Utica, N.Y.
Courtesy Staff; Oneida Healthcare Center, Oneida, N.Y.
Consulting Staff; Mohawk Valley Psychiatric Center, Utica,
N.Y.

CLINICAL TRAINING:

1982-1984 Fellow in Gastroenterology - New York Medical College:
☞ Westchester County Medical Center, Valhalla, N.Y.
☞ Metropolitan Hospital Center, New York, N.Y.
☞ Lincoln Hospital, Bronx, N.Y.

1980-1982 Resident in Internal Medicine - Lenox Hill Hospital, New York,
N.Y.

1979-1980 Intern in Internal Medicine - Lenox Hill Hospital, New York,
N.Y.

EDUCATION:

New York University School of Medicine, New York, N.Y.
☞ Doctor of Medicine, 1979

University of Pennsylvania, Philadelphia, PA.

⊆ Bachelor of Arts, 1972

ACADEMIC APPOINTMENTS:

1982-1984 Clinical Instructor of Medicine
⊆ New York Medical College, Valhalla, N.Y.

BOARDS:

1985 Gastroenterology, American Board of Internal Medicine

1982 Internal Medicine, American Board of Internal Medicine

1980 National Board of Medical Examiners

Continued....

Page 2

Curriculum Vitae

Stanley P. Weiselberg, M. D.

MEMBERSHIP:

- ⊆ American Gastroenterological Association
- ⊆ American Society of Gastrointestinal Endoscopy
- ⊆ American College of Gastroenterology
- ⊆ American College of Physicians

LICENSURE: New York State License 143482

FOREIGN LANGUAGES: 

Schedule 2A - Personal Qualifying Information

Name of Individual:

NORMAN A NESKIN, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
NESKIN		NORMAN		A
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Digestive Disease Medicine of Cny, Ltd 110 Business Park Dr.				
CITY	STATE	ZIP CODE	TELEPHONE	
UTICA	NY	13502	(315) 624-7000	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
OWNER - PARTNER				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
VIRGINIA POLYTECHNIC INSTITUTE	BLACKSBURG, VA			Completion of Bachelor's work	1978
VIRGINIA POLYTECHNIC INSTITUTE	BLACKSBURG, VA	ENGINEERING	BACHELOR'S	BS WITH DISTINCTION MECHANICAL	1978
UPSTATE MEDICAL CENTER	SYRACUSE, NY			MD	1982

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD/GASTROGASTROENTEROLOGY # 157789-1	THE UNIVERSITY OF THE STATE OF NY EDUCATION DEPARTMENT 89 WASHINGTON AVE ALBANY NY 12234-1000 EMAIL: GPROCFEC@MAIL.NYSED.EDU TEL: (518) 474-3877 EXT 410		01/31/2011

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

11/1 b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

11(c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS AS WELL, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT ENDOSCOPY. IN ADDITION I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF MULTISPECIALTY MEDICINE & GENERAL MEDICINE, LLP AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THIS MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:


DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
SEE ENCLOSED		

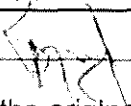
8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

--

The undersigned hereby certifies under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X 	10/15/09
PRINT OR TYPE NAME	
Norman NESLIN	
TITLE	

NOTARY	DATE
	10/15/09

Has the original of this document been signed and notarized? Yes No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/ 20 13

Curriculum Vitae

NORMAN R. NESLIN, M. D.

Date of Birth:

Place of Birth:

Business Address:

Digestive Disease Medicine of Central New York
110 Business Park Drive
Utica, New York 13502
315-624-7000

Family:

Clinical Training:

Clinical/Research Fellow - Gastroenterology
Rhode Island Hospital, Providence, Rhode Island
Brown University Medical School - July 1985 to 1987

Assistant Instructor in Medicine
Brown University Medical School - July 1985 to 1987

Internal Medicine Residency and Internship
SUNY Upstate Medical Center, Syracuse, New York - July 1982 to 1985

Education:

Upstate Medical Center, Syracuse, New York
M. D. - 1982

Virginia Polytechnic Institute, Blacksburg, VA
B.S. with Distinction; Mechanical
Engineering - Biomedical Engineering - 1978

Completion of Biomedical Co-Op Program
Virginia Polytechnic Institute - 1978

Licensure:

New York State - #157789B

Certification:

Diplomate, American Board of Gastroenterology - 1987
Diplomate, American Board of Internal Medicine - 1985

Diplomate, National Board of Medical Examiners - 1982

Societies:

American College of Physicians
American Gastroenterological Association
American College of Gastroenterology
Medical Society of New York
Crohns & Colitis Foundation
Medical Advisor - Central New York Celiac Society

Hospital Appointments:

Active staff at St. Elizabeth Medical Center, Utica, NY
Active staff at Faxton-St. Luke=s Healthcare, Utica, NY
Active staff at Oneida Healthcare Center, Oneida, NY

Research:

Duodcnal Ulcer Study - Nightly dosing vs standard treatment
Behavior of Esophageal Smooth Muscle in Response to Esophagitis
Abstract - 1987

Schedule 2A - Personal Qualifying Information

Name of Individual:

ROBERT K PAVELOCK, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
PAVELOCK		ROBERT		R.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
DIGESTIVE DISEASE MEDICINE OF CNY, LTD 110 BUSINESS PARK DR.				
CITY	STATE	ZIP CODE	TELEPHONE	
UTICA	NY	13502	(315) 624-7600	
DATE OF BIRTH (Month/Day/Year)	PLACE OF BIRTH (County/State)		Social Security #	
[REDACTED]	[REDACTED]		[REDACTED]	
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
OWNER - PARTNER				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
STATE UNIVERSITY OF NY @ STONY BROOK	NEW YORK, NY	1975	1980	BA-BIOLOGY	1980
NICHOLAS COPERNICUS MEDICAL CENTER OF MEDICINE		1980	1984	MD	1984
CARLOW PORTLAND THROUGH SUNY - STONY BROOK MEDICAL EXCHANGE PROGRAM					

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD/GASTROENTEROLOGY #174776-1	THE UNIVERSITY OF THE STATE OF NY EDUCATION DEPARTMENT TEL: (518) 474-3817 ext 410 EMAIL: DRKEG@CEP.HPR.NYSED.BOS		08/31/2011

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

2/17 a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

11(c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS AS WELL, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT GYN/SURG. IN ADDITION I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF DIAGNOSTIC AND SPECIALTY MEDICINE & GENERAL NEW YORK, LLP AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THIS MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

New York State Department of Health
 Certificate of Need Application

Schedule 2A

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

New York State Department of Health
Certificate of Need Application

Schedule 2A

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The undersigned hereby certifies under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X <i>[Signature]</i>	11/11/09
PRINT OR TYPE NAME	
ROBERT PROULOCK MD	
TITLE	

NOTARY	DATE
<i>[Signature]</i>	11/11/09

Has the original of this document been signed and notarized? Yes No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/ 20 10

Steven Z. Kussin, M.D., F.A.C.P.
Stanley P. Weiselberg, M.D.
Norman R. Neslin, M.D.
Robert R. Pavelock, M.D.
Bradley F. Sklar, M.D.
Richard M. Cherpak, M.D.
Nancy Furlong, R.N., M.S., A.N.P.
Lisa Sullivan, R.N., M.S.N., C.S.N.P.
Deborah Clarey, R.N., B.A., F.N.P.-C
E. Patricio Onate, R. PA.-C

Curriculum Vitae

Personal Information

ROBERT R. PAVELOCK, M. D.

Date of Birth:

Place of Birth:

Home Address:

Business Address:

Digestive Disease Medicine of Central New York
110 Business Park Drive
Utica, New York 13502
315-624-7000

Marital Status:

Spouse's Name:

Education & Professional Work Experience

1991-present	Digestive Disease Medicine of Central New York
1988-1991 -	Part-time attending physician Emergency Room, Northport VAMC
1988-1991	Chief Fellow in Gastroenterology/Hepatology University Hospital, SUNY-Stony Brook, NY Northport VAMC, Northport, NY
1986-1988	Residency in Internal Medicine SUNY-Stony Brook University Hospital, Stony Brook, NY Northport VAMC, Northport, NY
1985-1986	Internship in Internal Medicine SUNY-Stony Brook University Hospital, Stony Brook, NY Northport VAMC, Northport, NY

Continued....



DIGESTIVE
DISEASE
MEDICINE
OF CENTRAL NEW YORK, LLP

Page 2
Curriculum Vitae
Robert R. Pavelock, M. D.

1984-1985	Clerkships in Endocrinology, Gastroenterology, Pulmonology & Cardiology VA Medical Center, Northport, NY
1980-1984	Nicholas Copernicus Academy of Medicine Cracow, Poland through SUNY-Stony Brook Medical Exchange Program - M.D.
1975-1980	State University of New York at Stony Brook BA - Anthropology

Licensure

New York - 1987 License Number 174776-1

Board Certified in Internal Medicine - 1990

Board Certified in Gastroenterology - 1993 - Number 121075

Professional Affiliations

Associate - American College of Physicians
Member - American Medical Association
Member - American Gastroenterological Association

Publications & Current Clinical Research

Accepted for Publication	Cheng, EH. Pavelock, R. Multiple Gastrointestinal Tract Diverticula. Gastrointestinal Radiology, Vol 12, No 4 (1990)
Project in Progress (principal investigator)	Evaluation of Intravenous Antibiotics for the prevention of spontaneous bacterial peritonitis in decompensated cirrhosis with ascites following invasive procedure.

Continued....

Page 3
Curriculum Vitae
Robert R. Pavelock, M. D.

References

Douglas Brand, M. D.
Chief, Division of Gastroenterology
HSC - T16-060
University Hospital
SUNY - Stony Brook, NY 11794

Peter Ells, M. D.
Director, GI Fellowship Program
HSC - T16-060
University Hospital
SUNY - Stony Brook, NY 11794

Stephen E. Steinberg, M. D.
Director, Biliary Lithotripsy Program
HSC - T16-060
University Hospital
SUNY - Stony Brook, NY 11794



New York, NY
Latham, NY
Syracuse, NY
East Meadow, NY

www.mlmic.com

Claims Experience

Report Type: Credentialing

Run Date: 10/1/2009

Claims reported since: 7/1/1975

Reference #: MP0405747

Reporting on: Robert R Pavelock

>>>> No claim files found for this policyholder. <<<<

Codefendant Section

Reporting on: Robert R Pavelock

>>>> No codefendant information found <<<<

Schedule 2A - Personal Qualifying Information

Name of Individual:

BRADLEY F SKLAR MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
<i>SKLAR</i>		<i>BRADLEY</i>		<i>F</i>
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
<i>DIGESTIVE DISEASE MEDICINE OF CNY, LLC 110 BUSINESS PARK DR.</i>				
CITY	STATE	ZIP CODE	TELEPHONE	
<i>UTICA</i>	<i>NY</i>	<i>13502</i>	<i>(315) 624-7000</i>	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
<i>OWNER - PARTNER</i>				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
<i>HAMILTON COLLEGE</i>	<i>CLINTON, NY</i>			<i>BA</i>	<i>1984</i>
<i>NEW YORK UNIVERSITY SCHOOL OF MEDICINE</i>	<i>NEW YORK, NY</i>			<i>MD</i>	<i>1988</i>

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD/GASTROENTEROLOGY #179332-1	THE UNIVERSITY OF THE STATE OF NY EDUCATION RETIRED TEL: (518) 474-3817 EXT 440 EMPLOYEE OFFICE R. 4012, NYSEA CON		08/31/2010

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

2/1 a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

111(c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS AS SUCH, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT CLINICS. IN ADDITION I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF DIGESTIVE AND COLONIC MEDICINE IN CENTRAL NEW YORK AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THIS MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
SEE ENCLOSED CLAIMS HX REPORT		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

New York State Department of Health
 Certificate of Need Application

Schedule 2A

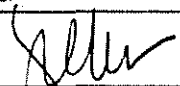
9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

New York State Department of Health
Certificate of Need Application

Schedule 2A

--

The undersigned hereby certifies under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X 	11/11/09
PRINT OR TYPE NAME	
BRADLEY SULLAR, MD	
TITLE	

NOTARY	DATE
	11/11/09

Has the original of this document been signed and notarized?

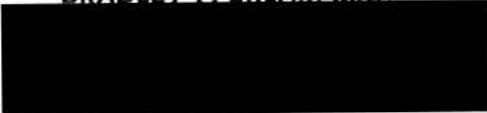
Yes

No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/20 10

BRADLEY E. SKLAR, M.D.

Home Address:



Business Address:

DDM Office
110 Business Park Drive
Utica, New York 13502
(315) 624-7000
(315) 793-1129 (Fax)

Personal Data:



UNDERGRADUATE EDUCATION:

HAMILTON COLLEGE

B.A., 1984, Summa Cum Laude; class rank: 4/411
Major: Psychobiology (Departmental Honors)
Awards: B.F. Skinner Prize for Research in
Psychobiology
Dean's List (each semester)

Societies: Phi Beta Kappa
Psi Chi (National Honor Society in
Psychology) President
Sigma Xi (Scientific Research Society)

MEDICAL EDUCATION:

NEW YORK UNIVERSITY SCHOOL OF MEDICINE

M.D., 1988
Activities: Chairman-Curriculum Committee
Neuroscience, 1986
Chairman-Curriculum Committee
Cell Biology, 1985
Volunteer-Stuyvesant Clinic,
New York, New York, 1985-1987

NEW YORK UNIVERSITY HONORS PROGRAM, 1986-1988

POST-GRADUATE TRAINING:

**NEW YORK UNIVERSITY INTERNAL MEDICINE PROGRAM,
July 1988 - 1991**

Bellevue Hospital and Tisch Hospital, New York

**DIPLOMATE IN INTERNAL MEDICINE, AMERICAN BOARD OF
INTERNAL MEDICINE, September 1991**

**NEW YORK UNIVERSITY - V.A. GASTROENTEROLOGY
FELLOWSHIP, July 1991 - 1993**

New York V.A. Medical Center and Bellevue Hospital Center

**DIPLOMATE IN GASTROENTEROLOGY, AMERICAN BOARD
OF INTERNAL MEDICINE, September 1993**

Continued....

RESEARCH ACTIVITIES:

1992 - 1993

Clinical Research - Intestinal Permeability

Gastroenterology Department - New York V.A. Medical Center, New York, New York

1989 - 1991

Clinicopathologic Research - Malabsorption

Comparison of the clinical history with the histologic appearance of small bowel mucosa of adults with malabsorption. Department of Surgical Pathology, NYU-Tisch Hospital

1986 - 1988

New York University Honors Program:

Clinical Research - Arm Exercise Stress Testing
Department of Cardiology, Veterans Hospital of Manhattan

1985 - 1986

Clinical Research - Mechanoreception

Dept. of Physiology and Biophysics, New York University
(Results presented at Society of Neuroscience Convention, Washington, D.C.)

1984 - 1985

New York University Honors Program:

Basic Research - Extracellular recording in Somatosensory Cortex in monkeys
Department of Physiology and Biophysics,
New York University

1982 - 1984

Clinical Research - Mechanoreception

Institute for Sensory Research - Syracuse, NY
Department of Psychology, Hamilton College, Clinton, NY

PUBLICATIONS:

Gardner, E.P., Sklar, B.F.: **Discrimination of the Direction of Motion on the Human Hand: A psychophysical study of stimulation parameters.** Journal Neurophysiology, 1994, June; 71(6): 241-29

Weinshel, E.H., Sklar, B.F., Raicht, R.F., Ma, T.Y. and Hollander, D.: **Intestinal Permeability Is Not Increased in HIV Positive Patients** . Gastroenterology, April 1994, Vol. 106, No. 4, Pt. 2, A792 Abstract.

Goodman, S., Rubler, S., Bryk, H., Sklar, B.F. and Glasser, L.: **Arm Exercise Testing with Myocardial Scintigraphy in Asymptomatic Patients with Peripheral Vascular Disease.** Chest, 1989, Apr; 95(4): 740-6

Continued....

Gardner, E., Sklar, B.F.: **Factors Influencing Discrimination of Motion on Human Hand.** Soc. Neurosci Abst., 1986 Vol. 12, Pt 2. 798

Gescheider, G., Sklar, B.F.: **Vibrotactile Forward Masking: Psychophysical Evidence for a Triplex Theory of Cutaneous Mechanoreception.** J. Acoust. Soc. Amer., 87(2), Aug. 1985.

CLINICAL/PROFESSIONAL EXPERIENCE:

1993 - present

Digestive Disease Medicine of Central New York
Partner (6 person group) - 100% Gastroenterology
practice

1993 - present

Attending Physician
Faxton Hospital, Utica, New York

1993 - present

Attending Physician
St. Elizabeth Medical Center, Utica, New York

1993 - present

Attending Physician
St. Luke's Memorial Hospital Center, Utica, New York

1993 - present

Attending Physician
Oneida Healthcare Center, Oneida, New York

PROFESSIONAL SOCIETIES:

American Medical Association

American Gastroenterology Association

Medical Society, State of New York

American College of Gastroenterology

LIST OF MEMBERS

SCHEDULE 2

ST. ELIZABETH MEDICAL CENTER (20% MEMBER)

(Board of Trustee Members)

Richard F. Zweifel
Catherine McDonough Cominsky
Ramond Meier
Gregory Evans
Norman I. Siegel
Richard H. Ketcham
Eric B. Yoss
Harrison J. Hummel, III
Steven M. Williams, M.D.
Marianne W. Gaige
Fred Talarico, M.D.
Donna J. McGartland
Alfred D. Matt

Schedule 2A - Personal Qualifying Information

Name of Individual:

Richard F. Zweifel

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Zwiefel		Richard		F.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Gruver, Zweifel & Scott, LLP, 7936 Seneca Turnpike				
CITY	STATE	ZIP CODE	TELEPHONE	
Clinton	NY	13323	315-797-7781	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
Member of the Board of Trustees				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Clarkson College of Technology	Potsdam, NY	9/1/1981	5/1/1983	BS	5/1/1983
Canton College of Technology	Canton, NY	9/1/1979	5/1/1981	AAS	5/1/1981

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

If Yes, provide details below:	
9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
<p>In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus a part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976 plus interest.</p>	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Richard F. Zweifel

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

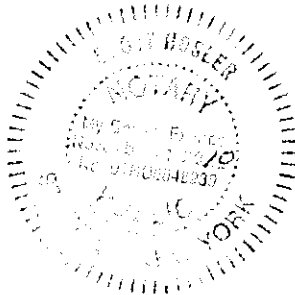
- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Presbyterian Home for Central New York, Inc., Folts Home, Inc., Katherine Luther Residential Healthcare & Rehabilitation Center, Inc., Lutheran Home of Central New York, Presbyterian Residential Community, Inc. Robynwood Home for Adults, Eastern Star Home, Leatherstocking Healthcare, LLC. My CPA firm provides audit and consulting services for these facilities.

Has the original of this document been signed and notarized? Yes No

SIGNATURE:		DATE
X <i>Richard F. Zweifel</i>		9/28/10
PRINT OR TYPE NAME		
Richard F. Zweifel		
TITLE		
Member of the Board of Trustees		

NOTARY	DATE
<i>[Signature]</i>	9/28/10



ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information

Schedule 2A

5. Offices Held or Ownership in Health Facilities

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facilities violation of applicable laws and regulations?

Yes. In or about June 2007, the Department of Health completed a recertification survey of St. Elizabeth Medical Center's Home Care [St. Elizabeth Certified Home Care] wherein they found violations of Article 36 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. A Statement of Deficiencies resulted but prior to service of a Notice of Hearing and Statement of Charges and commencement by DOH of an administrative enforcement action based on the alleged violations, St. Elizabeth settled with DOH. As a part of the 2008 settlement, St. Elizabeth admitted to the existence of substantial evidence of violations of 10 NYCRR §763.4(h) [Policies and procedures of service delivery], 10 NYCRR §763.6(b) [Patient assessment and plan of care], 10 NYCRR §763.6(e) [Patient assessment and plan of care], 10 NYCRR §763.11(a) [Governing authority] and 10 NYCRR §763.11(b) [Governing authority]. A \$10,000 civil penalty was assessed of which \$5,000 was paid and the remaining \$5,000 was suspended providing St. Elizabeth did not violate certain terms and regulations within 3 years.

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:

c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?

Yes.

1. In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus a part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976 plus interest.

Schedule 2A - Personal Qualifying Information

Name of Individual:

Catherine McDonough Cominsky

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Cominsky		Catherine		M
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	315 733 8516	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Suny Genesee	Genesee, NY	1981	1983	BS	1983
Utica College	Utica NY	1998	2001	MS	2001

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed P/T Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Utica College		Higher Education/ College	
STREET ADDRESS OF EMPLOYER			
1600 Burrstone Rd			
CITY	STATE	ZIP CODE	
Utica	NY	13502	
DATES OF EMPLOYMENT	FROM	TO	
1998		present	
POSITION/RESPONSIBILITIES			
Adjunct Professor Teacher Education. P/Time			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2008	Present	ST Elizabeths Hospital	Genesee St Utica NY	Article 28 - medical facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
BOT trustee member		Dept. of Health		Corning Tower Empire State Plaza Albany NY

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

New York State Department of Health
 Certificate of Need Application

Schedule 2A

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
Michael Cominsky			[REDACTED]	
From	To	Name of Facility	Address of Facility	Type of Facility
2001	Present	Sitvin Health Center	Tilden Rd New Hartford NY 13413	Skilled nursing
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
BOT		NYS dept. of health		Albany, New York

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No *CME*

If "Yes", Please provide the following Information:

NATURE OF VIOLATION
<i>Sitvin Health Care: survey related enforcement action, related to 2010 survey</i>
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
<i>Dept. of Health</i>

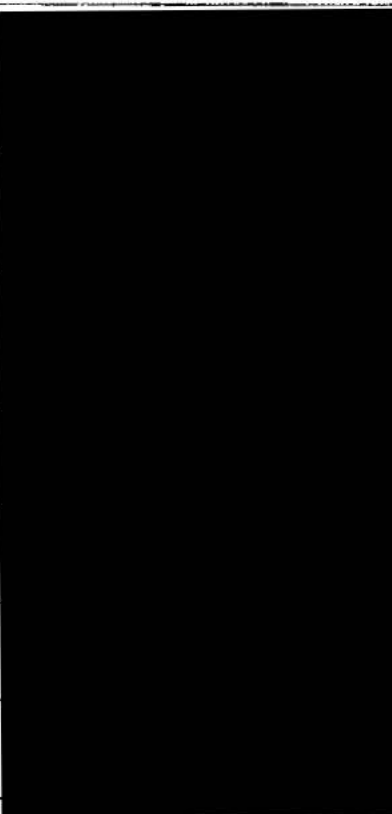
Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications


For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below: *attached*

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		

8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	


--

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p> </p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p> </p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	
<p>If "Yes", provide details below</p>	
<p> </p>	

New York State Department of Health
 Certificate of Need Application

Schedule 2A

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:		DATE
X	<i>Catherine M. Conroy</i>	9/30/10
PRINT OR TYPE NAME		
Catherine M Conroy		
TITLE		
BOT St. Elizabeths Medical Center		9/30/10.

NOTARY		DATE
<i>Anthony Zammello</i>		9/30/10

Has the original of this document been signed and notarized? Yes No

ANTHONY ZAMMIELLO
 Notary Public, State of New York
 Registration No. 01ZA6143424
 Qualified in Oneida County
 Commission expires April 10, 2014

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Catherine H. Cominsky

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

[Empty box for describing relationships and payment methods]

Has the original of this document been signed and notarized? Yes No

SIGNATURE	DATE
X <i>Catherine H. Cominsky</i>	9/30/10
PRINT OR TYPE NAME	DATE
Catherine H. Cominsky	9/30/10
TITLE	
DOT ST Elizabeth's Medical Center	

NOTARY	DATE
<i>Anthony Zammiello</i>	9/30/10

ANTHONY ZAMMIELLO
 Notary Public, State of New York
 Registration No. 01ZA6143424
 Qualified in Onelida County
 Commission expires April 10, 2014

ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information

Schedule 2A

5. Offices Held or Ownership in Health Facilities
c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facilities violation of applicable laws and regulations?

Yes. In or about June 2007, the Department of Health completed a recertification survey of St. Elizabeth Medical Center's Home Care [St. Elizabeth Certified Home Care] wherein they found violations of Article 36 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. A Statement of Deficiencies resulted but prior to service of a Notice of Hearing and Statement of Charges and commencement by DOH of an administrative enforcement action based on the alleged violations, St. Elizabeth settled with DOH. As a part of the 2008 settlement, St. Elizabeth admitted to the existence of substantial evidence of violations of 10 NYCRR §763.4(h) [Policies and procedures of service delivery], 10 NYCRR §763.6(b) [Patient assessment and plan of care], 10 NYCRR §763.6(e) [Patient assessment and plan of care], 10 NYCRR §763.11(a) [Governing authority] and 10 NYCRR §763.11(b) [Governing authority]. A \$10,000 civil penalty was assessed of which \$5,000 was paid and the remaining \$5,000 was suspended providing St. Elizabeth did not violate certain terms and regulations within 3 years.

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:

c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?

Yes.

1. In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus a part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976 plus interest.

Schedule 2A - Personal Qualifying Information

Name of Individual:

Raymond A. Meier

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Meier		Raymond		A.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
Bond, Schoeneck & King, PLLC 501 Main Street				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13501	315-738-1223	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]				
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
Trustee, St. Elizabeth Medical Center				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Syracuse University	Syracuse, NY	9/1/1970	5/1/1974	BA	5/1/1974
Syracuse Univ. Coll. of Law	Syracuse, NY	9/1/1973	5/1976	JD	5/1976

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Attorney at Law	Sup. Ct. App. Div. 4 th Dept.	1-13-77	none
	50 East Ave/ Rochester, NY		
	585-530-3200		

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Bond, Schoeneck & King		law firm	
STREET ADDRESS OF EMPLOYER			
501 Main Street			
CITY		STATE	ZIP CODE
Utica		NY	13501
DATES OF EMPLOYMENT	FROM	TO:	
	1/15/2007	present	
POSITION/RESPONSIBILITIES			
of counsel			
REASON FOR DEPARTURE			
na			

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NAME OF EMPLOYER		TYPE OF BUSINESS	
New York State Senate		State legislature	
STREET ADDRESS OF EMPLOYER			
The Capitol			
CITY		STATE	ZIP CODE
Albany		NY	12240
DATES OF EMPLOYMENT	FROM	TO:	
	1/1/1997	12/31/2006	
POSITION/RESPONSIBILITIES			
State Senator			
REASON FOR DEPARTURE			
[REDACTED]			

NAME OF EMPLOYER		TYPE OF BUSINESS	
Saunders Kahler law firm		law firm	
STREET ADDRESS OF EMPLOYER			
185 Genesess Street			
CITY		STATE	ZIP CODE
Utica		NY	13501
DATES OF EMPLOYMENT	FROM	TO:	
	1/1/1997	12/31/2006	
POSITION/RESPONSIBILITIES			
of counsel (part time while serving in State Senate)			
REASON FOR DEPARTURE			
[REDACTED]			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
5/9/2007	present	St. Elizabeth Medical Center	2209 Genesee Street Utica, NY 13501	Article 28
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board of Trustee Member		Department of Health		Corning Tower Empire State Plaza Albany, NY

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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From	To	Name of Facility	Address of Facility	Type of Facility
		none		
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
		none		
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes** **No**

If "Yes, Please provide the following information:

NATURE OF VIOLATION
see attachment
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? **Yes** **No**

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
see attachment		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

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9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

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Raymond A. Meier

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X 	10/5/2010
PRINT OR TYPE NAME	
Raymond A. Meier	
TITLE	
Trustee	

NOTARY	DATE
	10/5/10

Has the original of this document been signed and notarized? Yes No

MAUREEN E. FRANKLIN
Notary Public, State Of New York
Appointed In Oneida County
No. 01FR6051213
My Commission Expires Nov. 20, 20 10

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

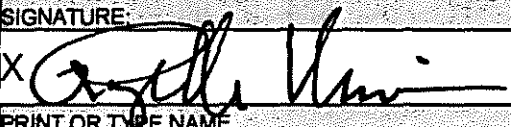
Raymond A. Meier

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X 	10/5/2002
PRINT OR TYPE NAME	
Raymond A. Meier	
TITLE	
Trustee	

NOTARY	DATE
	10/5/10

MAUREEN E. FRANKLIN
Notary Public, State Of New York
Appointed In Onondaga County
No. 01FF005-213
My Commission Expires Nov. 20, 20 10

ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information

Schedule 2A

5. Offices Held or Ownership in Health Facilities

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facilities violation of applicable laws and regulations?

Yes. In or about June 2007, the Department of Health completed a recertification survey of St. Elizabeth Medical Center's Home Care [St. Elizabeth Certified Home Care] wherein they found violations of Article 36 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. A Statement of Deficiencies resulted but prior to service of a Notice of Hearing and Statement of Charges and commencement by DOH of an administrative enforcement action based on the alleged violations, St. Elizabeth settled with DOH. As a part of the 2008 settlement, St. Elizabeth admitted to the existence of substantial evidence of violations of 10 NYCRR §763.4(h) [Policies and procedures of service delivery], 10 NYCRR §763.6(b) [Patient assessment and plan of care], 10 NYCRR §763.6(e) [Patient assessment and plan of care], 10 NYCRR §763.11(a) [Governing authority] and 10 NYCRR §763.11(b) [Governing authority]. A \$10,000 civil penalty was assessed of which \$5,000 was paid and the remaining \$5,000 was suspended providing St. Elizabeth did not violate certain terms and regulations within 3 years.

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:

c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?

Yes.

1. In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus a part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976 plus interest.

Schedule 2A - Personal Qualifying Information

Name of Individual:

Gregory P Evans

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Evans		Gregory		P
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
St. Elizabeth Medical Center at 2209 Genesee Street				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13501	315 798 8100	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
Board Memeber				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Mohawk Valley Community College	Utica, NY	9/1/1977	5/1/1979	AS	5/1/1979
Clarkson College	Potsdam, NY	9/1/1979	5/1/1981	BS	5/1/1979
Rensselaer Polytechnic Institute	Troy, NY	9/1/1988	5/1/1991	MBA	5/1/1991

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
The Indium Corporation of America		Manufacturing	
STREET ADDRESS OF EMPLOYER			
1676 Lincoln Avenue			
CITY		STATE	ZIP CODE
Utica		NY	13502
DATES OF EMPLOYMENT	FROM	TO:	
	7/6/1981		
POSITION/RESPONSIBILITIES			
President & Chief Operating Officer			
REASON FOR DEPARTURE			
Current Position			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
7/8/2008	7/1/2016	St Elizabeth's Medical Center	Utica, NY	Medical Center/Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Trustee		Department of Health		Corning Tower, Empire State Plaza, Albany, NY 12223

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

**New York State Department of Health
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Schedule 2A

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes** **No**

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
See Attachment 1
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? **Yes** **No**

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
See Attachment 1		
GIVE ANY FURTHER DETAILS		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

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<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If "Yes", provide details below</p>	

New York State Department of Health
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Schedule 2A

See Attachment 1

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X 	30 Sep 10
PRINT OR TYPE NAME	
Gregory P Evans	
TITLE	
Trustee	

NOTARY	DATE
	30 Sept 2010

Has the original of this document been signed and notarized? Yes No

MELISSA A. LEVESQUE
Notary Public, State of New York
Appointed in Herkimer County
My Commission Expires 9-11-14

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:


Gregory P Evans

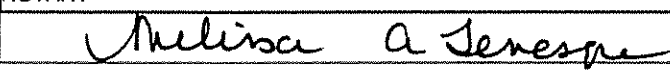
This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X 	30 Sep 10
PRINT OR TYPE NAME	
GREGORY P. EVANS	
TITLE	
Trustee	

NOTARY	DATE
	30 Sept 10

MELISSA A. LEVESQUE
 Notary Public, State of New York
 Appointed in Herkimer County
 My Commission Expires 9-14-14

**ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
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5. Offices Held or Ownership in Health Facilities

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facilities violation of applicable laws and regulations?

Yes. In or about June 2007, the Department of Health completed a recertification survey of St. Elizabeth Medical Center's Home Care [St. Elizabeth Certified Home Care] wherein they found violations of Article 36 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. A Statement of Deficiencies resulted but prior to service of a Notice of Hearing and Statement of Charges and commencement by DOH of an administrative enforcement action based on the alleged violations, St. Elizabeth settled with DOH. As a part of the 2008 settlement, St. Elizabeth admitted to the existence of substantial evidence of violations of 10 NYCRR §763.4(h) [Policies and procedures of service delivery], 10 NYCRR §763.6(b) [Patient assessment and plan of care], 10 NYCRR §763.6(e) [Patient assessment and plan of care], 10 NYCRR §763.11(a) [Governing authority] and 10 NYCRR §763.11(b) [Governing authority]. A \$10,000 civil penalty was assessed of which \$5,000 was paid and the remaining \$5,000 was suspended providing St. Elizabeth did not violate certain terms and regulations within 3 years.

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center and as an officer of The Indium Corporation of America, the Medical Center and The Indium Corporation have been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:

c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?

Yes.

1. In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus a part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976 plus interest.

Schedule 2A - Personal Qualifying Information

Name of Individual:

NORMAN I. SIEGEL

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
SIEGEL		NORMAN		I.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
New York State Court of Claims, 207 Genesee Street				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13501	(315) 793-2184	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
Judge- Trustee				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Colgate University	Hamilton, NY	9/59	5/63	B.A.	1963
Albany Law School	Albany, NY	9/63	5/66	J.D.	1966

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Law License, #1013887	Appellate Division, 4th Dept.	1967	None

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
NYS Court of Claims		Unified Court System	
STREET ADDRESS OF EMPLOYER			
207 Genesee Street			
CITY		STATE	ZIP CODE
Utica		NY	13501
DATES OF EMPLOYMENT		FROM	TO:
		6/7/2000	Present
POSITION/RESPONSIBILITIES			
Judge, Court of Claims and Acting Supreme Court Justice			
REASON FOR DEPARTURE			
N/A			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2000	2010	St. Elizabeth Medical Center	2209 Genesee Street, Utica, NY 13501	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Trustee/Chairman of the Board		NYS Department of Health		Albany, NY

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests N/A

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes** **No**

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
SEE ATTACHED
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? **Yes** **No**

If "No", provide an explanation

d. Affirmative Statement of Qualifications N/A

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
	SEE ATTACHED	
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

**New York State Department of Health
Certificate of Need Application**

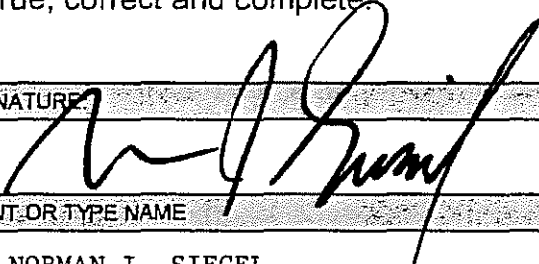
Schedule 2A


9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
SEE ATTACHED	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

New York State Department of Health
 Certificate of Need Application

Schedule 2A

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X 	10/1/10
PRINT OR TYPE NAME	
NORMAN I. SIEGEL	
TITLE	
Chairman of Board of Trustees	

NOTARY	DATE
 LISA H. JOHNSON NOTARY PUBLIC, STATE OF NEW YORK APPOINTED IN HERKIMER COUNTY MY COMMISSION EXPIRES 12/31/2013	10/1/10

Has the original of this document been signed and notarized? Yes No

ATTACHMENT TO SCHEDULE 2A
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information

5. **OFFICES HELD OR OWNERSHIP IN HEALTH FACILITIES**

c. **ENFORCEMENT ACTIONS**

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations?

Yes. In or about June 2007, the Department of Health completed a recertification survey of St. Elizabeth Medical Center's Home Care (St. Elizabeth Certified Home Care) wherein they found violations of Article 36 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. A Statement of Deficiencies resulted, but prior to service of a Notice of Hearing and Statement of Charges and commencement by DOH of an administrative enforcement action based on the alleged violations, St. Elizabeth settled with DOH. As a part of the 2008 settlement, St. Elizabeth admitted to the existence of substantial evidence of violations of 10 NYCRR §763.4(h) [Policies and procedures of service delivery], 10 NYCRR §763.6(b) [Patient assessment and plan of care], 10 NYCRR §763.6(e) [Patient assessment and plan of care], 10 NYCRR §763.11(a) [Governing authority] and 10 NYCRR §763.11(b) [Governing authority]. A \$10,000 civil penalty was assessed of which \$5,000 was paid and the remaining \$5,000 was suspended providing St. Elizabeth did not violate certain terms and regulations within 3 years.

6. **RECORD OF LEGAL ACTIONS**

3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?

Yes. I have been named as a partner in a law firm in two legal malpractice matters. One matter was dismissed and the other was settled by my insurance company for \$50,000.00. Neither of those actions involved any legal work that I did. They both involved legal work of a former partner of mine.

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2,000 individuals.

11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any capacity wherein the company:

c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?

- Yes.
1. In July of 2001, St. Elizabeth Medical Center entered into a settlement agreement with the United States (through the U.S. Attorney for the Eastern District of Pennsylvania, the Office of the Inspector General and DHHS) in connection with an investigation into Medicare claims submitted by St. Elizabeth Medical Center for certain clinical laboratory outpatient services from January 1989 to December 31, 1993. The case involved recommendations made by a consulting firm, which were relied upon by St. Elizabeth Medical Center. The allegations were settled, without admission with respect to any issue of law or fact, for \$227,000. The claims for which the investigation and resulting settlement pertained, were prior to my service on the Board of Trustees. However, the finalization of the investigation and the settlement took place during my Board service.
 2. In or about December 1007, the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus a part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976 plus interest.

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

NORMAN I. SIEGEL

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

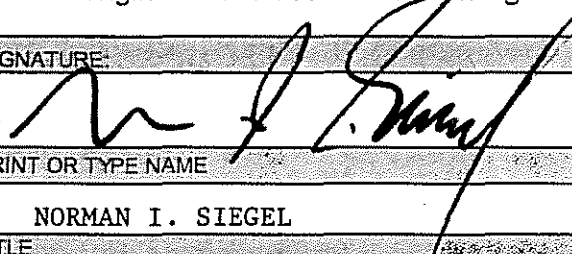
Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

[Empty box for describing relationships and payment methods]

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X 	10/1/10
PRINT OR TYPE NAME	
NORMAN I. SIEGEL	
TITLE	
Chairman of Board of Trustees	

NOTARY	DATE
	10/1/10

LISA H. JOHNSON
NOTARY PUBLIC, STATE OF NEW YORK
APPOINTED IN HERKIMER COUNTY
MY COMMISSION EXPIRES 12/31/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Richard H. Ketcham

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Ketcham		Richard		H
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
St. Elizabeth Medical Center, 2209 Genesee Street				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13501	315-798-8237	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
President				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Univ. of Rochester	Rochester, NY	9/1/1971	5/1/1976	B.A. Biology	5/1976
Cornell University	Ithaca, NY	9/1/1976	5/1/1978	M.B.A.	5/1978

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
St. Elizabeth Medical Center		Acute care hospital	
STREET ADDRESS OF EMPLOYER			
2209 Genesee Street			
CITY		STATE	ZIP CODE
Utica		NY	13501
DATES OF EMPLOYMENT	FROM	TO:	
	9/8/10	present	
POSITION/RESPONSIBILITIES			
President and CEO			
REASON FOR DEPARTURE			
n/a			

NAME OF EMPLOYER		TYPE OF BUSINESS	
Brooks Memorial Hospital		Acute care hospital	
STREET ADDRESS OF EMPLOYER			
529 Central Ave.			
CITY		STATE	ZIP CODE
Dunkirk		NY	12009
DATES OF EMPLOYMENT	FROM	TO:	
	1/1/1986	1/1/2009	
POSITION/RESPONSIBILITIES			
President & CEO			
REASON FOR DEPARTURE			
[REDACTED]			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
9/8/2010	present	Mohawk Valley Heart Institute	2209 Genesee Street, Utica, NY 13501	Article 28
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
		Dept. of Health		Corning Tower, Empire State Plaza, Albany, NY

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation


--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.


I have been a hospital CEO for more than 30 years. I have served on numerous professional and civic boards including the American Hospital Association Regional Policy Board, Healthcare Association of New York State, Fredonia Rotary Club, United Way of Chautauqua County & the Northern Chautauqua Community Foundation.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:



8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	
f) was denied a certificate of authority or license to do business in any state?	
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	
Were any claims made against that bond? If "Yes", provide details below	
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	

New York State Department of Health
Certificate of Need Application

Schedule 2A

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:		DATE
X	<i>Richard Ketcham</i>	10/1/10
PRINT OR TYPE NAME		
Richard Ketcham		
TITLE		
President & CEO		
NOTARY		DATE

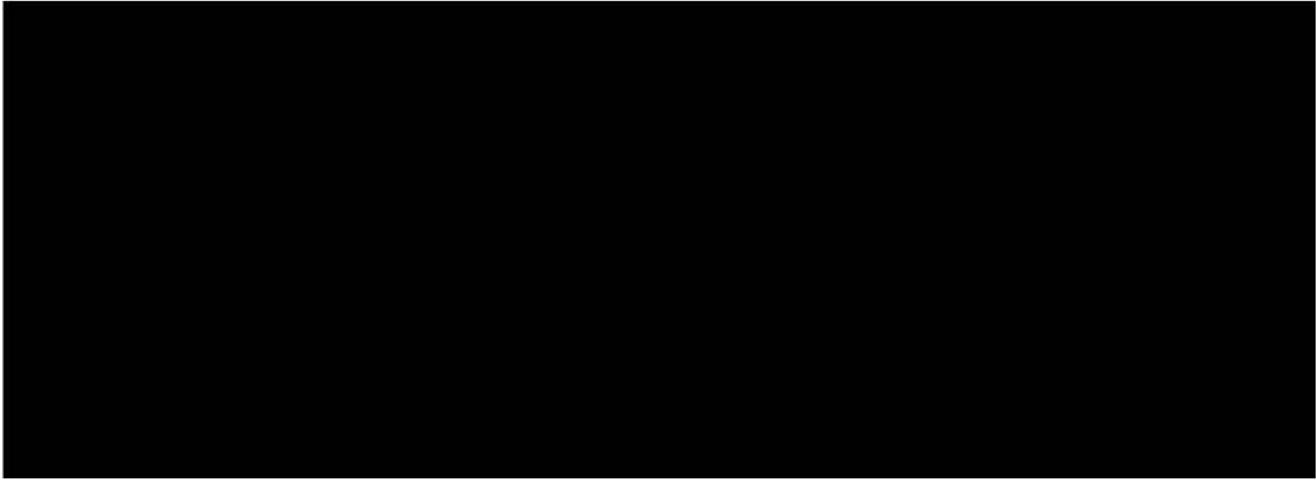
Has the original of this document been signed and notarized? Yes No

**ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information**

Schedule 2A

6. Record of Legal Actions

3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?



5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Richard H. Ketcham

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

I am the President & CEO of St. Elizabeth Medical Center, located in Utica, NY and I am paid a salary for my services in this position.

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X <i>Richard Ketcham</i>	10/1/10
PRINT OR TYPE NAME	
Richard Ketcham	
TITLE	
President/CEO, St. Elizabeth Medical Center	

NOTARY	DATE

Schedule 2A - Personal Qualifying Information

Name of Individual:

ERIC B YOSS

1. Personal Identifying Information

LAST NAME YOSS		FIRST NAME ERIC		MIDDLE INITIAL B
STREET ADDRESS [REDACTED]				
CITY		STATE	ZIP CODE	TELEPHONE
[REDACTED]				
BUSINESS NAME AND ADDRESS Pulmonary Critical Care Associates				
CITY	STATE	ZIP CODE	TELEPHONE	
NH	NY	13413	315 735 2294	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]				
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION St Elizabeth Board Member				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
UNIV. OF ROCH. ROCH. NY		1974	1979	BA-MS	1978-1979
NY Medical College	Valhalla NY	1979	1983	MD	1983
Thomas Jefferson Univ Medical Center	Phil. PA	1983	1988	Res. Res. & Fellowship	1986/1988

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Physician 173840 ERIC YOSS MD	NYS-DOH	7/1/2010	6/30/2012

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SELF - PCCA		Medical Group Practice	
STREET ADDRESS OF EMPLOYER			
89 Genesee Street			
CITY	STATE	ZIP CODE	
New Hartford	NY	13413	
DATES OF EMPLOYMENT	FROM	TO:	
	1988	PRESENT	
POSITION/RESPONSIBILITIES			
Physician Partner			
REASON FOR DEPARTURE			
Correct			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

New York State Department of Health
 Certificate of Need Application

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the outof-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
1/1/00	present	St Elizabeth's Med Ctr	2209 Green Street 24th Fl NY	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
BOT member		DOH		Albany NY

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information: *See Attached*

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

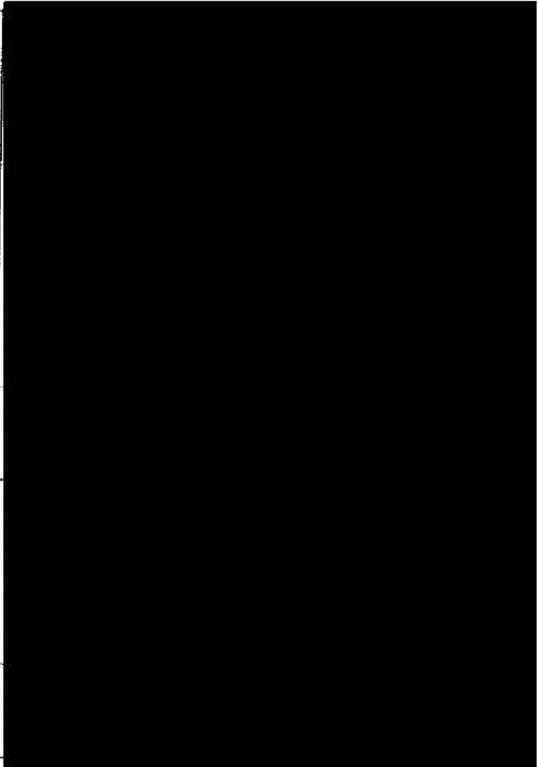
--

d. Affirmative Statement of Qualifications

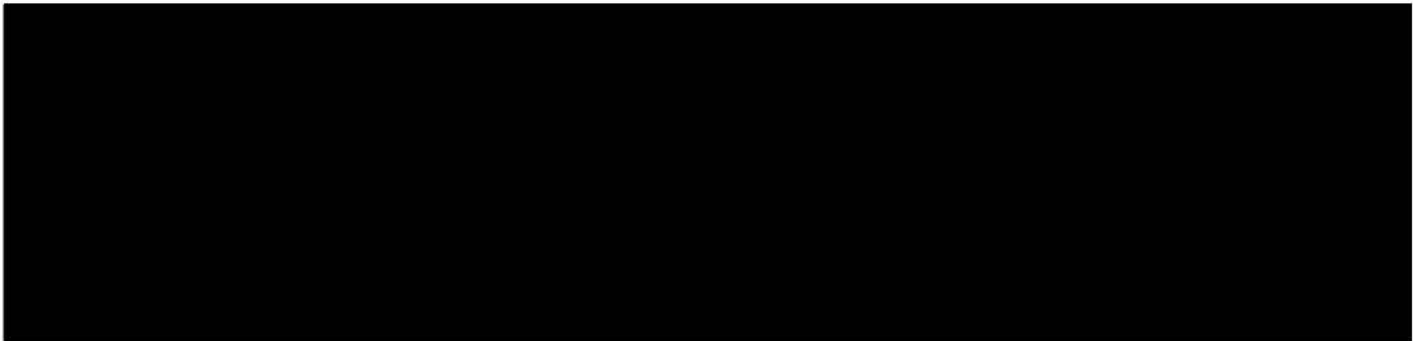
For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.


--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:



8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	

New York State Department of Health
 Certificate of Need Application

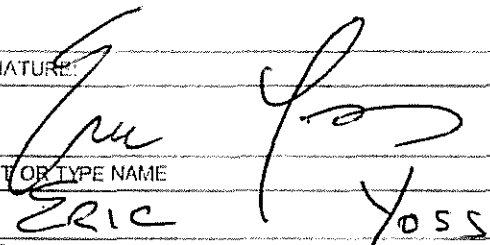
Schedule 2A

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	
<p>If "Yes", provide details below</p>	

New York State Department of Health
Certificate of Need Application

Schedule 2A

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X 	9/24/10
PRINT OR TYPE NAME	
ERIC YOSS	
TITLE	
MD. Board Member	

NOTARY	DATE
	9/27/10

Has the original of this document been signed and notarized? Yes No

MAUREEN E. FRANKLIN
Notary Public, State Of New York
Appointed In Oneida County
No. 01FR6051213
My Commission Expires Nov. 20, 20 10

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

ERIC YOSS

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

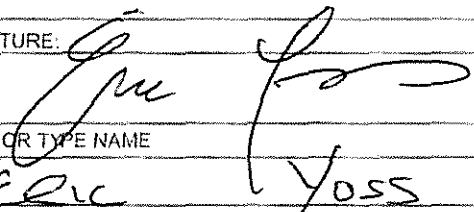
Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

[Empty box for describing health care facilities]

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X 	2/24/10
PRINT OR TYPE NAME	
ERIC YOSS	
TITLE	
MD - Board Member St. Elizabeths	

MAUREEN E. FRANKLIN
Notary Public, State Of New York
Appointed In Oneida County
No. 01FR6051213

NOTARY	DATE
Maureen E. Franklin	10/10/5/10
My Commission Expires Nov. 20, 20	

- 1) Personal: Medical Director of Critical Care Services - St Elizabeths
Medical Director of Respiratory Care - St Elizabeths
- 2) Partnership - PCA - Provides Critical Care Consulting Services to Both FAXTON St Lukes and St Elizabeths Hospitals

PAYMENTS Made to Medical Partnership For Services Rendered

Yoss 2/24/10

ATTACHMENT 1 TO SCHEDULE 2-BO1.000

ATTACHMENT 1 TO SCHEDULE 2

New York State Department of Health

Certificate of Need Application

Personal Qualifying and Disclosure Information

Schedule 2A

5. Offices Held or Ownership in Health Facilities

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facilities violation of applicable laws and regulations?

Yes. In or about June 2007, the Department of Health completed a recertification survey of St. Elizabeth Medical Center's Home Care [St. Elizabeth Certified Home Care] wherein they found violations of Article 36 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. A Statement of Deficiencies resulted but prior to service of a Notice of Hearing and Statement of Charges and commencement by DOH of an administrative enforcement action based on the alleged violations, St. Elizabeth settled with DOH. As a part of the 2008 settlement, St. Elizabeth admitted to the existence of substantial evidence of violations of 10 NYCRR §763.4(h) [Policies and procedures of service delivery], 10 NYCRR §763.6(b) [Patient assessment and plan of care], 10 NYCRR §763.6(e) [Patient assessment and plan of care], 10 NYCRR §763.11(a) [Governing authority] and 10 NYCRR §763.11(b) [Governing authority]. A \$10,000 civil penalty was assessed of which \$5,000 was paid and the remaining \$5,000 was suspended providing St. Elizabeth did^{not} violate certain terms and regulations within 3 years.

E. J. ...
4/21/10

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

E. J. ...
4/21/10

11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:

c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?

Yes.

1. In July 2001, St. Elizabeth Medical Center entered into a settlement agreement with the United States (through the U.S. Attorney for the Eastern District of Pennsylvania, the Office of the Inspector General and DHHS) in connection with an investigation into Medicare claims submitted by St. Elizabeth Medical Center for certain clinical laboratory outpatient services from January 1989 to December 31, 1993. The case involved recommendations made by a consulting firm, which were relied upon by St. Elizabeth Medical Center. The allegations were settled, without admission with respect to any issue of law or fact, for \$227,000. The claims for which the investigation and resulting settlement pertained, were prior to my service on the Board of Trustees. However, the finalization of the investigation and the settlement took place during my Board service.

2. In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus a part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976 plus interest.

EYM 9/24/10

Schedule 2A - Personal Qualifying Information

Name of Individual:

Harrison J. Hummel III

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Hummel, III		Harrison		J
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
Hummel's Office Plus				
CITY	STATE	ZIP CODE	TELEPHONE	
Mohawk	N.Y.	13407	315-866-3860	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]				
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
Board Member				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
[REDACTED]					
H.C.C. College	Herkimer	1972	1974	AAS	1974

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Hummel's Office Plus		Office Supply + Furniture	
STREET ADDRESS OF EMPLOYER			
25 Canal Street			
CITY		STATE	ZIP CODE
Mohawk		N.Y	13407
DATES OF EMPLOYMENT		FROM	TO:
1972 - Current		1972	2010 (Current)
POSITION/RESPONSIBILITIES			
CEO / President			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

New York State Department of Health
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Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
5/1/05	Present	ST. E's medical	2209 Geneva St	Article 28
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board Member		Dept of Health		Corning Tower Empire State Plaza Albany NY

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
<i>(see attachments)</i>
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> <i>OK</i>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		

see attachment #1

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

New York State Department of Health
Certificate of Need Application

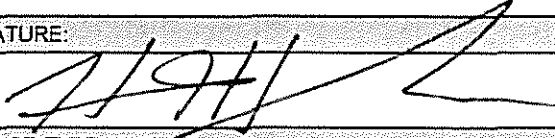
Schedule 2A

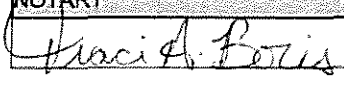
<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <i>ADMITTED</i> <i>OK</i></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p><i>(see attachment #1)</i></p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If "Yes", provide details below</p>	

New York State Department of Health
Certificate of Need Application

Schedule 2A

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X 	10/4/2010
PRINT OR TYPE NAME	
Harrison J. Hummel III	
TITLE	

NOTARY	DATE
	10/4/2010

Has the original of this document been signed and notarized? Yes No

TRACI A. BORIS
Notary Public, State of New York
No. 02B0603761
Qualified in Oneida County
Commission Expires April 21, 2011

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Harrison J. Hummel III

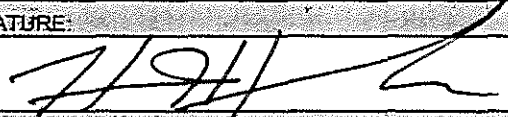
This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

OWNER OF HUMMEL'S OFFICE PLUS WE SELL TO HEALTH FACILITIES IN THE MOHAWK VALLEY

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE:
X 	10/4/2010
PRINT OR TYPE NAME	
Harrison J. Hummel III	
TITLE	
BOARD MEMBER	

NOTARY	DATE
	10/4/2010

TRACI A. BORIS
Notary Public, State of New York
No. 02BO6030781
Qualified in Oneida County
Commission Expires April 21, 20 11

ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information

Schedule 2A

5. Offices Held or Ownership in Health Facilities

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facilities violation of applicable laws and regulations?

Yes. In or about June 2007, the Department of Health completed a recertification survey of St. Elizabeth Medical Center's Home Care [St. Elizabeth Certified Home Care] wherein they found violations of Article 36 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. A Statement of Deficiencies resulted but prior to service of a Notice of Hearing and Statement of Charges and commencement by DOH of an administrative enforcement action based on the alleged violations, St. Elizabeth settled with DOH. As a part of the 2008 settlement, St. Elizabeth admitted to the existence of substantial evidence of violations of 10 NYCRR §763.4(h) [Policies and procedures of service delivery], 10 NYCRR §763.6(b) [Patient assessment and plan of care], 10 NYCRR §763.6(e) [Patient assessment and plan of care], 10 NYCRR §763.11(a) [Governing authority] and 10 NYCRR §763.11(b) [Governing authority]. A \$10,000 civil penalty was assessed of which \$5,000 was paid and the remaining \$5,000 was suspended providing St. Elizabeth did not violate certain terms and regulations within 3 years.

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:

c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?

Yes.

1. In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus a part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976 plus interest.

Schedule 2A - Personal Qualifying Information

Name of Individual:

Steven M. Williams, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Williams		Steven		M.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
Mohawk Valley Retire				
CITY	STATE	ZIP CODE	TELEPHONE	
New Hartford	NY	13413	315-732-0995	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]				
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
Board of Trustees				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Medical College of Virginia	Richmond, VA	1985	1989	M.D	1989
State University of NY Binghamton	Binghamton, NY	1981	1985	B.A	1985

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
Medical Physician 208523	The University of the State of New York Education Department Office of Professions www.op.nysed.gov	6/2/1997	2/28/2011

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement: []

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Mohawk Valley Health		Physician Practice	
STREET ADDRESS OF EMPLOYER			
83 Geneva Street			
CITY		STATE	ZIP CODE
New Hartford		NY	13413
DATES OF EMPLOYMENT		FROM	TO:
		Founded in 1998	Present
POSITION/RESPONSIBILITIES			
Physician, Owner			
REASON FOR DEPARTURE			
—			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

New York State Department of Health
 Certificate of Need Application

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
5/1/85	5/2013 Present	St Elizabeths Medical Center	2300, Geneva Street Utica, NY 13501	Article 28
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board of Trustee Member		Department of Health		Albany, NY

From	To	Name of Facility	Address of Facility	Type of Facility
1998	Present	Mohegan Valley Racine	83 Geneva Street New Hartford, NY 13413	Physician Practice
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Owner				

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following information:

Please See Attachment 1 to Schedule 2 Enclosed

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

Please See Attachment 1 to Schedule 2 Enclosed

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

**New York State Department of Health
Certificate of Need Application**


Schedule 2A

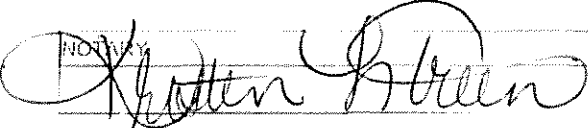
9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	<i>See Attachment 1 to Schedule 2 Enclosed</i>
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

New York State Department of Health
Certificate of Need Application

Schedule 2A

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE: X 	DATE 9/22/10
PRINT OR TYPE NAME Steven M. Williams, MD	
TITLE MD	

NOTARY 	DATE 9/22/10
---	-----------------

Has the original of this document been signed and notarized?

Yes

No

KRISTEN L. TREAN
Notary Public, State of New York
No. 01TR6032818
Qualified in Oneida County
Commission Expires November 8, 20 13

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Steven M. Williams, MD

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

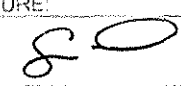
I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

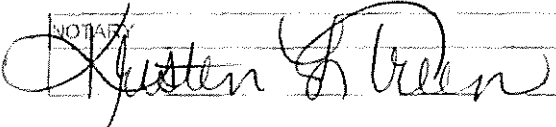
--

Has the original of this document been signed and notarized?

Yes

No

SIGNATURE: X 	DATE 9/22/10
PRINT OR TYPE NAME Steven M. Williams, MD	
TITLE MD	

NOTARY 	DATE 9/22/10
---	-----------------

KRISTEN L. TREAN
Notary Public, State of New York
No. 01TR6032818
Qualified in Oneida County
Commission Expires November 8, 20 13

ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information

Schedule 2A

5. Offices Held or Ownership in Health Facilities
c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facilities violation of applicable laws and regulations?

Yes. In or about June 2007, the Department of Health completed a recertification survey of St. Elizabeth Medical Center's Home Care [St. Elizabeth Certified Home Care] wherein they found violations of Article 36 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. A Statement of Deficiencies resulted but prior to service of a Notice of Hearing and Statement of Charges and commencement by DOH of an administrative enforcement action based on the alleged violations, St. Elizabeth settled with DOH. As a part of the 2008 settlement, St. Elizabeth admitted to the existence of substantial evidence of violations of 10 NYCRR §763.4(h) [Policies and procedures of service delivery], 10 NYCRR §763.6(b) [Patient assessment and plan of care], 10 NYCRR §763.6(e) [Patient assessment and plan of care], 10 NYCRR §763.11(a) [Governing authority] and 10 NYCRR §763.11(b) [Governing authority]. A \$10,000 civil penalty was assessed of which \$5,000 was paid and the remaining \$5,000 was suspended providing St. Elizabeth did not violate certain terms and regulations within 3 years.

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:

c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?

Yes.

1. In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus a part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976 plus interest.

Schedule 2A - Personal Qualifying Information

Name of Individual:

Marianne W. Gaige

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Gaige		Marianne		W.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Cathedral Corporation 632 Ellsworth Road				
CITY	STATE	ZIP CODE	TELEPHONE	
Rome	Ny	13441	315-338-0021	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
Board of Trustees - St. Elizabeth's Medical Center				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Harvard University Graduate School of Business	Boston, MA	9/85	5/87	MBA	5/87
Alfred University	Alfred, NY	9/76	5/80	BS Acct.	5/80

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Cathedral Corporation		Printer	
STREET ADDRESS OF EMPLOYER			
632 Ellsworth Road			
CITY		STATE	ZIP CODE
Rome		NY	13441
DATES OF EMPLOYMENT		FROM	TO
		2/1992	Present
POSITION/RESPONSIBILITIES			
President and CEO			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

New York State Department of Health
 Certificate of Need Application

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests *Only Board Member*

From	To	Name of Facility	Address of Facility	Type of Facility
4/5/05	current	WCP	Mary Street Utica, NY	Behavioral and Adult Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board of Directors		NYS Dept of Health		Albany, NY

From	To	Name of Facility	Address of Facility	Type of Facility
9/14/05	current	St. Elizabeth's MC	Genesee Street Utica, NY	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board of Trustees		NYS Dept of Health		Albany, NY

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests *N/A*

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
<i>Homecare 5c attachment</i>
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		

8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is 'yes' to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p> </p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p> </p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	
<p>If "Yes", provide details below</p>	

New York State Department of Health
Certificate of Need Application

Schedule 2A

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X <i>Marianne W. Gaige</i>	9/27/10
PRINT OR TYPE NAME	
<i>Marianne W. Gaige</i>	
TITLE	
<i>President and CEO Cathedral Corporation</i>	
NOTARY	DATE
<i>P. O. Gaige</i>	

Has the original of this document been signed and notarized?

Yes

No

PETER O. GAIGE
Notary Public, State of New York
Reg. # 02GA4803639
Qualified in Oneida County
Commission Expires March 30, 20 14

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Marianne W. Gaige

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X <i>Marianne W. Gaige</i>	9/27/10
PRINT OR TYPE NAME	
Marianne W. Gaige	
TITLE	
President and CEO, Cathedral Corporation	
NOTARY	DATE
<i>Peter O. Gaige</i>	

PETER O. GAIGE
Notary Public, State of New York
Reg. # 02GA4803639
Qualified in Oneida County
Commission Expires March 30, 2014

**ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information**

Schedule 2A

**5. Offices Held or Ownership in Health Facilities
c. Enforcement Actions**

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facilities violation of applicable laws and regulations?

Yes. In or about June 2007, the Department of Health completed a recertification survey of St. Elizabeth Medical Center's Home Care [St. Elizabeth Certified Home Care] wherein they found violations of Article 36 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. A Statement of Deficiencies resulted but prior to service of a Notice of Hearing and Statement of Charges and commencement by DOH of an administrative enforcement action based on the alleged violations, St. Elizabeth settled with DOH. As a part of the 2008 settlement, St. Elizabeth admitted to the existence of substantial evidence of violations of 10 NYCRR §763.4(h) [Policies and procedures of service delivery], 10 NYCRR §763.6(b) [Patient assessment and plan of care], 10 NYCRR §763.6(e) [Patient assessment and plan of care], 10 NYCRR §763.11(a) [Governing authority] and 10 NYCRR §763.11(b) [Governing authority]. A \$10,000 civil penalty was assessed of which \$5,000 was paid and the remaining \$5,000 was suspended providing St. Elizabeth did not violate certain terms and regulations within 3 years.

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:

c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?

Yes.

1. In or about December 2007 the U.S. Attorney General's Office conducted a nationwide investigation into billing for kyphoplasty procedures. St. Elizabeth Medical Center was thus a part of that investigation and it was determined that certain procedures billed as inpatient should have been billed as outpatient. St. Elizabeth Medical Center entered into an agreement to pay back \$195,976 plus interest.

Schedule 2A - Personal Qualifying Information

Name of Individual:

DR FRED TALARICO

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
TALARICO		FRED		L
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
DR. FRED TALARICO, 8115 GENESEE ST, UTICA NY				
CITY	STATE	ZIP CODE	TELEPHONE	
UTICA	NY	13501	315 733 1145	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)	Social Security #	
[REDACTED]				
CURRENT OR PROPOSED POSITON WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
BOSTON UNIV	BOSTON, MA	9/76	1/75	BA	1/75
U. AUTO GUADALUPE	GUAD, MEX	8/75	6/79	MD	6/79

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD-144506	SUNY -	1979	—

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SELF		CARDIOLOGY	
STREET ADDRESS OF EMPLOYER			
2115 GENESEE ST			
CITY		STATE	ZIP CODE
UTICA		NY	13171
DATES OF EMPLOYMENT		FROM	TO:
1		8/86	PRESENT
POSITION/RESPONSIBILITIES			
PHYSICIAN			
REASON FOR DEPARTURE			
—			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY	STATE	ZIP CODE	
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY	STATE	ZIP CODE	
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

New York State Department of Health
 Certificate of Need Application

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
1/04	12/10	ST. ELIZ. MED. CTR	UTICA, NY	HOSPITAL
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
PRESIDENT MED. STAFF / Member BOT		DOH		Corning Tower Empire State Plaza Albany, NY

From	To	Name of Facility	Address of Facility	Type of Facility
1/04	12/04	ST. ELIZ. MED. CTR	UTICA, NY	
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
VICE PRES. MEDICAL STAFF				

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

New York State Department of Health
 Certificate of Need Application

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From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

New York State Department of Health
 Certificate of Need Application

Schedule 2A

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

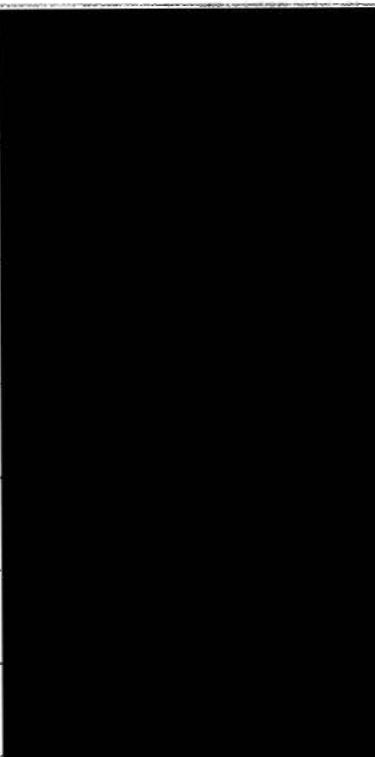
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d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

~

6. Record of Legal Actions


1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	
2) Are there any criminal actions pending against you?	
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	

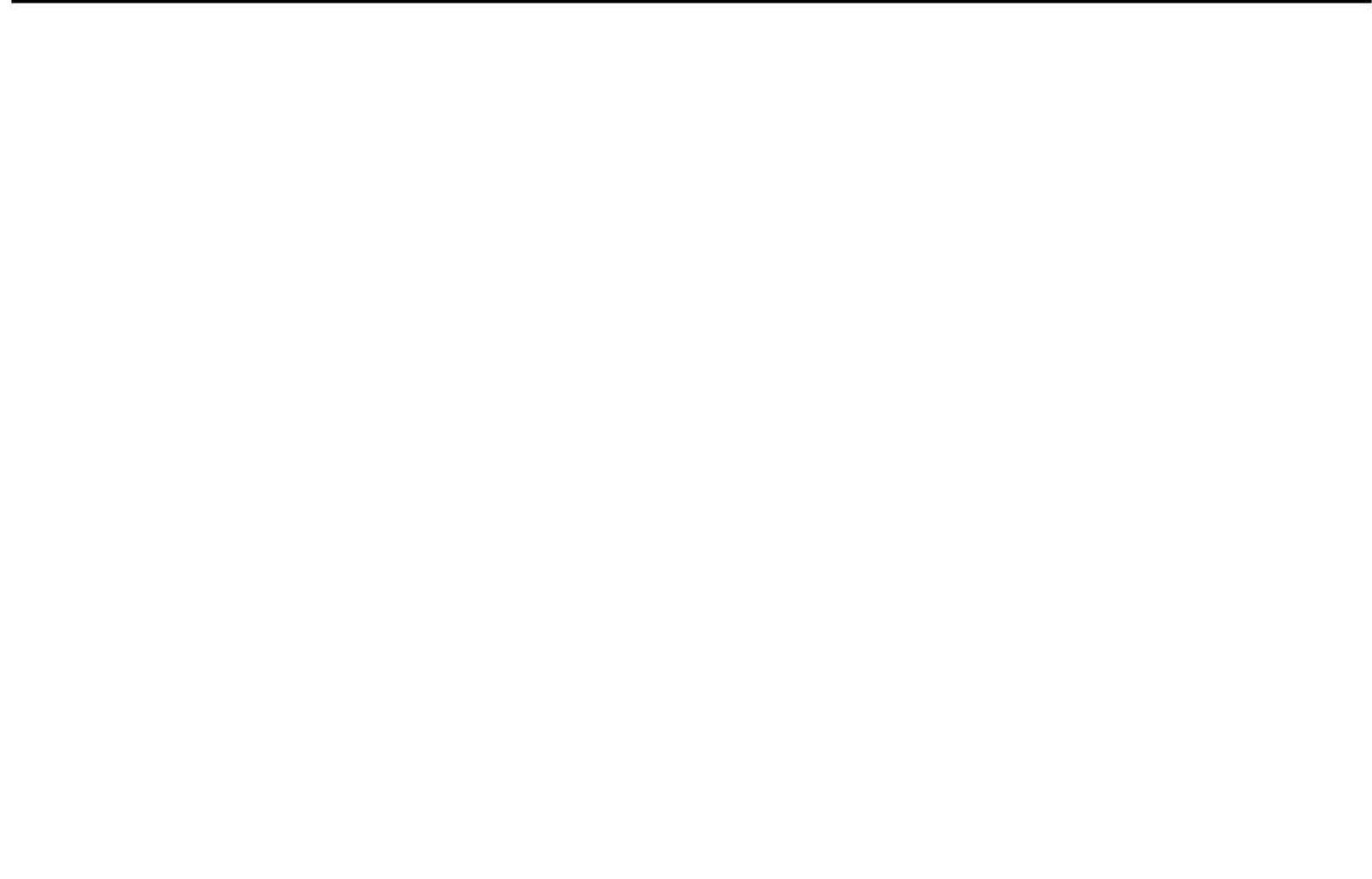
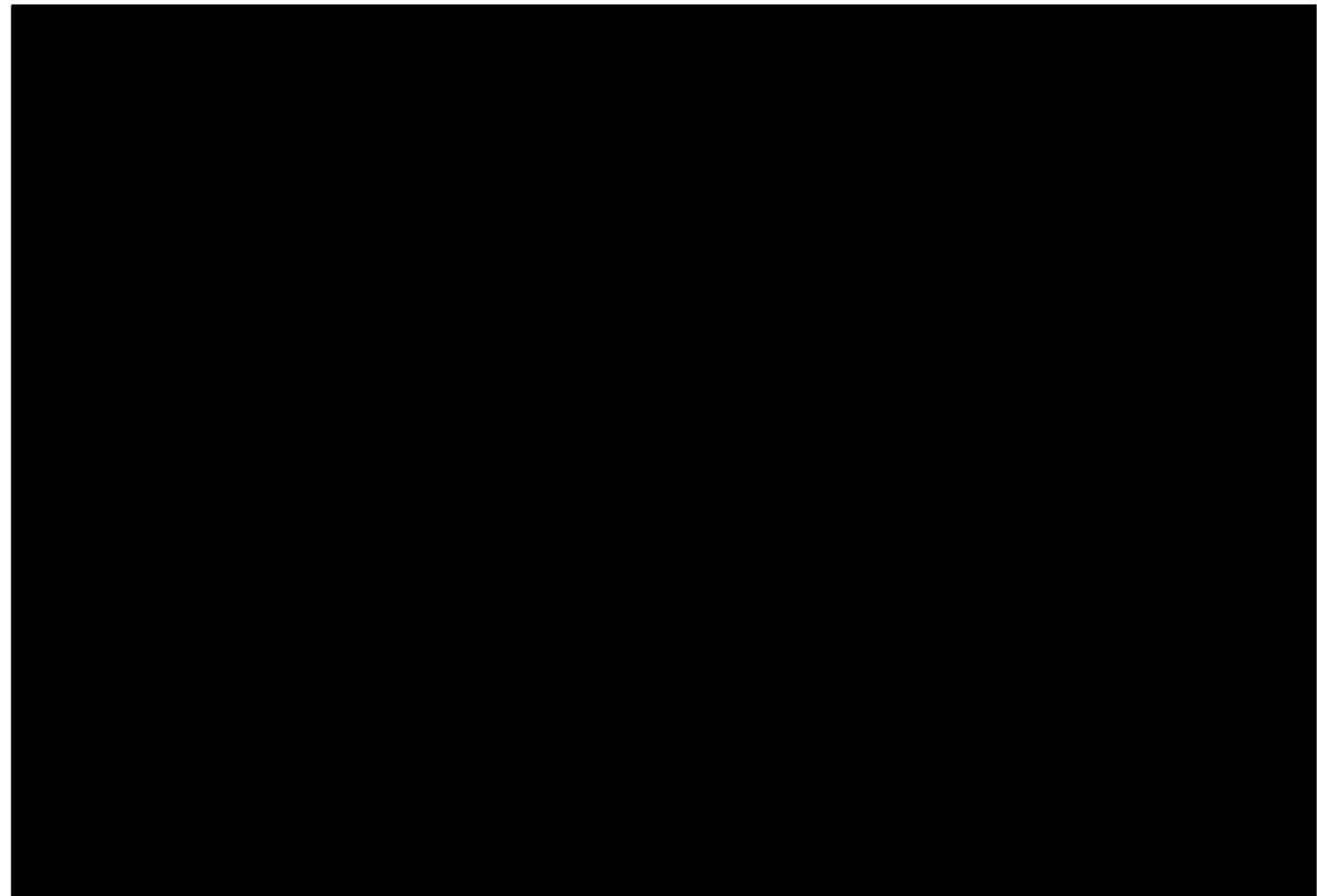
If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
----------------------------------	----------------	--------------------



(CONTINUED)

8) Have you ever changed your name or used an alias?	
If Yes, provide details below:	



New York State Department of Health
 Certificate of Need Application

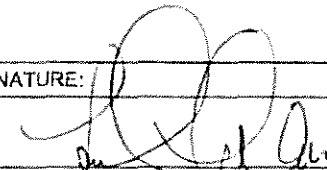
Schedule 2A

<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	
<p>f) was denied a certificate of authority or license to do business in any state?</p>	
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p> </p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	
<p>Were any claims made against that bond? If "Yes", provide details below</p>	
<p> </p>	
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	
<p>If "Yes", provide details below</p>	
<p> </p>	

New York State Department of Health
 Certificate of Need Application

Schedule 2A

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X 	10/6/10
PRINT OR TYPE NAME	
FRED L TALAPICO	
TITLE	
MD	

NOTARY	DATE
	10/06/10

Has the original of this document been signed and notarized?

Yes

No

FRANCIS M. ROMAN
 Notary Public, State of New York
 No. 8673880
 Commission Expires July 22, 2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

DR. FRED TALARUS

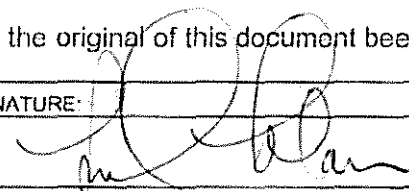
This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X 	10/6/10
PRINT OR TYPE NAME	
TITLE	

NOTARY	DATE
Francis D. Amicone	10/06/10

FRANCIS D. AMICONE
Notary Public, State of New York
No. 3673000
Qualified in Oneida County
Commission Expires July 21, 2013

ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information

Schedule 2A

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

Schedule 2A - Personal Qualifying Information

Name of Individual:

Donna J. McGartland

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
McGartland		Donna		J
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
Sisters of St. Francis of the Neumann Communities				
CITY	STATE	ZIP CODE	TELEPHONE	
Syracuse	NY	13208	315-634-7000	
DATE OF BIRTH (Month/Day/Year)	PLACE OF BIRTH (County/State)		Social Security #	
[REDACTED]	[REDACTED]		[REDACTED]	
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
Member of the Board of Trustees				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Universidad de Sagrado Corazon	San Juan, PR	9/1/2002	5/1/2007	MSNonProfit Administration	5/1/2007
St. Louis University	St. Louis, MO	8/1/1996	5/1/1997	Certificate Religious Formation	5/1/1997
University of Pittsburgh	Pittsburgh, PA	1/1/1987	5/1/1992	MSW	5/1/1992
University of Pittsburg	Pittsburgh, PA	9/1/1979	12/1/1985	BS Math/Comp Sci	12/1/1985

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
LSW, #SW003233L	Commonwealth of PA, Dept of State, 717-787-8503	3/1/09	2/28/2011

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Sisters of St. Francis of the Neumann Communities		Religious Congregation	
STREET ADDRESS OF EMPLOYER			
2500 Grant Blvd, Suite 3			
CITY		STATE	ZIP CODE
Syracuse		NY	13208
DATES OF EMPLOYMENT	FROM	TO:	
	4/1/2009		
POSITION/RESPONSIBILITIES			
Director of Ministry and Life Transitions. Responsible for assisting Sisters to discern their ministry options and help them in their retirement transitions.			
REASON FOR DEPARTURE			
currently employed			

NAME OF EMPLOYER		TYPE OF BUSINESS	
LIFE Beaver County		Medicare/Medicaid PACE program	
STREET ADDRESS OF EMPLOYER			
131 Center Ave, CenterPlace			
CITY		STATE	ZIP CODE
Aliquippa		PA	15001
DATES OF EMPLOYMENT	FROM	TO:	
	2/21/2007	3/13/2009	
POSITION/RESPONSIBILITIES			
LMSW, responsible for eassessing and addressing the psycho-social needs of frail, low-income elderly participants			
REASON FOR DEPARTURE			
[REDACTED]			

NAME OF EMPLOYER		TYPE OF BUSINESS	
St. Francis Center for Respite and Rehabilitation		Adult Day Care	
STREET ADDRESS OF EMPLOYER			
PO Box 372231			
CITY		STATE	ZIP CODE
Cayey		PR	00737
DATES OF EMPLOYMENT	FROM	TO:	
	6/1/1998	6/1/2006	
POSITION/RESPONSIBILITIES			
Founder and Executive Director			
REASON FOR DEPARTURE			
[REDACTED]			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
6/1/1998	6/1/2006	St. Francis Center for Respite and Rehabilitation	PO Box 372231 Cayey, PR 00737	Adult Day Care Center
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Executive Director/Founder		Department of the Family		Guayama, PR

From	To	Name of Facility	Address of Facility	Type of Facility
3/1/2005	6/1/2006	Centro de Respiro Cidreno	16 Calle Baldorioty	Adult Day Care Center
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Founder/ Interim Executive Director		Department of the Family		Guayama, PR

From	To	Name of Facility	Address of Facility	Type of Facility
6/15/09	present	St. Elizabeth Medical Center	2209 Genesee St, Utica, NY 13501	Article 28 hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member - Board of Trustée		DOH		Albany, NY

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I served as Executive Director of an Adult Day Care Facility. I possess a Master's degree in Nonprofit Administration and another in Social Work with a concentration in Administration. I have also served on several boards, including the Alzheimer's Association and the National Association of Social Workers.
--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		

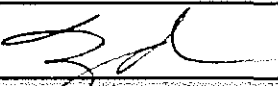
8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input type="checkbox"/>

New York State Department of Health
Certificate of Need Application

Schedule 2A

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X 	10-11-10
PRINT OR TYPE NAME	
Donna J McGarland	
TITLE	
Board Trustee	

NOTARY	DATE
	10-11-10

Has the original of this document been signed and notarized? Yes No

GAEL A. SOPCHAK
Notary Public - State of New York
Qualified in Onondaga County
Reg. No. 01SO5052527
My Commission Expires Nov. 27, 2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Donna J McGartland

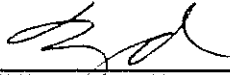
This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

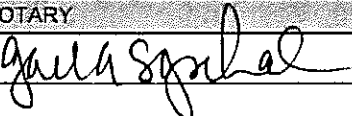
Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE	DATE
X 	10-11-10
PRINT OR TYPE NAME	
Donna J McGartland	
TITLE	
Board Trustee	

NOTARY	DATE
	10-11-10

GAEL A. SOPCHAK
Notary Public - State of New York
Qualified in Onondaga County
Reg. No. 01SO5052517
My Commission Expires Nov. 27, 2013

ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information

Schedule 2A

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

Schedule 2A - Personal Qualifying Information

Name of Individual:

Alfred D. Matt

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
<i>Matt</i>		<i>Alfred</i>		<i>D.</i>
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
<i>Matt Brewing Company, 811 Edward St.</i>				
CITY	STATE	ZIP CODE	TELEPHONE	
<i>Utica</i>	<i>NY</i>	<i>13502</i>	<i>315-624-2400</i>	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
<i>President and Chief operating Officer</i>				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
<i>Hobart College</i>	<i>Geneva, NY</i>	<i>1977</i>	<i>1981</i>	<i>BA</i>	<i>1981</i>
<i>Simon Business School</i>	<i>Rochester, NY</i>	<i>1985</i>	<i>1986</i>	<i>MBA</i>	<i>1986</i>

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Matt Brewing Company		Beverage Producer	
STREET ADDRESS OF EMPLOYER			
811 Edward St.			
CITY		STATE	ZIP CODE
Utica		NY	13502
DATES OF EMPLOYMENT	FROM	TO:	
January 1989	→	Present	
POSITION/RESPONSIBILITIES			
President			
REASON FOR DEPARTURE			
N/A			

New York State Department of Health
 Certificate of Need Application

Schedule 2A

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

New York State Department of Health
 Certificate of Need Application

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the outof-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
5/14/08	Present	ST ELIZABETH MEDICAL CENTER	2209 Genesee St Utica NY 13501	Article 28 Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member - Board of Trustee		DOH		Corning Tower, Empire State Plaza, ALBANY NY 12223

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

New York State Department of Health
 Certificate of Need Application

Schedule 2A

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

New York State Department of Health
 Certificate of Need Application

Schedule 2A

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

New York State Department of Health
Certificate of Need Application

Schedule 2A

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

New York State Department of Health
Certificate of Need Application

Schedule 2A

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X <i>Alfred D. Matt</i>	10/1/2010
PRINT OR TYPE NAME	
Alfred D. Matt	
TITLE	
President	

NOTARY	DATE
<i>Michael R. Filzer</i>	10-1-10

Has the original of this document been signed and notarized?

Yes

No

Michael R. Filzer
Notary Public of New York
Qualified in Herkimer County
Commission Expires 05-01-2014

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Alfred D. Matt

This statement must be completed by directors of notfor-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

[Empty box for describing relationships and payment methods]

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE
X <i>AD Matt</i>	10/1/2010
PRINT OR TYPE NAME	
Alfred D. Matt	
TITLE	
President	

NOTARY	DATE
<i>Michael R. Fitzer</i>	10-1-10

Michael R. Fitzer
Notary Public of New York
Qualified in Herkimer County
Commission Expires 05-01-2014

ATTACHMENT 1 TO SCHEDULE 2
New York State Department of Health
Certificate of Need Application
Personal Qualifying and Disclosure Information

Schedule 2A

6. Record of Legal Actions

5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?

Yes. As a member of the Board of Trustees of St. Elizabeth Medical Center, the Medical Center has been named in numerous lawsuits over the course of the years, ranging from medical malpractice actions to slip and fall to wrongful termination and employment actions. It is a hospital that provides care to tens of thousands of people a year and employs over 2000 individuals.

LIST OF MEMBERS

SCHEDULE 2

FAXTON ST. LUKE'S HEALTHCARE (20% MEMBER)

(Board of Trustee Members)

Domenic Aiello
Esther G. Bankert
Sidney J. Blatt
Martin Bull
Joan W. Compson
Leroy H. Cooley, M.D.
John Crossley
James E. Frederick, M.D.
Gary E. Gildersleeve
Todd S. Hutton
Karen L. Leach
Christopher Max, M.D.
Gregory B. McLean
Roger McReynolds
Michael Paparone
William M. Parker, M.D.
Scott H. Perra
James B. Stewart
Stephen L. Sweet
Richard C. Tantillo
Bonnie L. Woods

Schedule 2A - Personal Qualifying Information

Name of Individual:

Domenic Aiello

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Aiello		Domenic		P
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
Domenic P. Aiello, MD, FACE, 1 Oxford Crossing, Suite 4				
CITY	STATE	ZIP CODE	TELEPHONE	
New Hartford	NY	13413	315-732-3300	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]				
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
Hershey Medical Center	Hershey, PA	1987	1988	Endo Fellowship	1989
Highland Hospital	Rochester, NY	1983	1986	IM Residency	1986
SUNY At Buffalo	Buffalo, NY	1982	1983	Fifth Pathway	
Universidad Autonoma de Guadalajara	Guadalajara, Jalisco Mexico	1978	1982	MD	1982
Pennsylvania State University	State College, PA	1973	1977	BS	1977

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD / 157472	New York		

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
Self Employed		See Page 1	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT		FROM	TO:
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT		FROM	TO
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT		FROM	TO
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2001	Present	Independent Physician Urgent Care	1904 Genesee Street, Utica NY 13502	Urgent Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Owner				
From	To	Name of Facility	Address of Facility	Type of Facility
2002	Present	Faxton St. Luke's Healthcare	P O Box 479, Utica, NY 13503	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board Member		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	St. Luke's Home Residential Healthcare Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board Member		NYS DOH OSHM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board Member		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Visiting Nurse Assoc of Utica and Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Board Member		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2009	Present	Mohawk Valley Home Care, LLC	2521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Managers		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency	Address of Licensing Agency	

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency	Address of Licensing Agency	

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency	Address of Licensing Agency	

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency	Address of Licensing Agency	

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes X** **No**

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? **Yes X** **No**

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

--

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		
See attached Malpractice Action Information from private practice.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

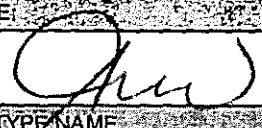
9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No X
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No X
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No X
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No X
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No X
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No X
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No X
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No X
If the answer is "yes to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No X
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No X
If "Yes", provide details below	

New York State Department of Health
Certificate of Need Application

Schedule 2A

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE: X 	DATE: 9/30/10
PRINT OR TYPE NAME: DOMINIC P ARLIO, MD	
TITLE: 	

NOTARY: Margaret A. Keblish	DATE: 9/30/10
--------------------------------	------------------

Has the original of this document been signed and notarized? Yes No

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

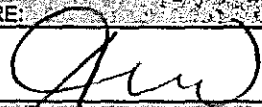
Douglas Arlio, MD

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

- I do NOT receive any income directly or indirectly from any other health care facility.
- I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

Has the original of this document been signed and notarized? Yes No

SIGNATURE:	DATE:
X 	9/30/10
PRINT OR TYPE NAME:	
Douglas Arlio, MD	
TITLE:	
MD	

NOTARY:	DATE:
Margaret A. Keblish	9/30/10

MARGARET A. KEBLISH
Notary Public, State of New York
No. 01KE6029261
Qualified in Oneida County
Commission Expires 08/09/2013

Schedule 2A - Personal Qualifying Information

Name of Individual:

Esther G. Bankert

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
Bankert		Esther		G.
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
State University of New York Institute of Technology				
CITY	STATE	ZIP CODE	TELEPHONE	
Utica	NY	13504	315-792-7295	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
[REDACTED]				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
See attached CV					

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
RN #226402			

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
See attached CV			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

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Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
2004	Present	Faxton St. Luke's Healthcare	1656 Champlin Ave, Utica, NY 13503	Hospital
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2004	Present	St. Luke's Home Residential Healthcare Facility, Inc.	1650 Champlin Ave, Utica, NY 13502	RHCF
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2004	Present	Senior Network Health, LLC	2541 Sunset Ave, Utica, NY 13502	Managed Long-Term Care
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH Office of Management Care		

From	To	Name of Facility	Address of Facility	Type of Facility
2004	Present	Mohawk Valley Home Care, LLC	1521 Sunset Ave, Utica, NY 13502	Home Care Service Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
2004	Present	Visiting Nurse Assoc of Utica & Oneida County, Inc.	2608 Genesee Street, Utica, NY 13502	Certified Home Health Agency
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency
Member Board of Directors		NYS DOH OHSM		217 South Salina Street, Syracuse, NY 13202

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name: None			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

c. Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? **Yes X** **No**

If "Yes, Please provide the following information:

NATURE OF VIOLATION
Faxton St. Luke's Healthcare received a Statement of Deficiencies on April 22, 2003 primarily related to its surgical services. The hospital entered into a Stipulation and Order (S&O) #BHS-03-08H. By letter dated November 19, 2004, the hospital was advised the "S&O is now deemed closed."
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)
NYS Department of Health, Central Regional Office, 217 South Salina Street, Syracuse, NY 13202

Has the enforcement or administrative action been resolved? **Yes X** **No**

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of or had a sentence imposed for a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
Faxton St. Luke's Healthcare has from time to time been named a defendant in various professional liability actions.		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

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9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE: X <i>Esther G. Barket</i>	DATE 9/20/10
PRINT OR TYPE NAME <i>Esther G. Barket</i>	
TITLE <i>Board Trustee</i>	
NOTARY <i>Laurie M. Hartman</i>	DATE 9/30/10

Has the original of this document been signed and notarized? Yes No

Laurie M. Hartman
Notary Public in the State of New York
Herkimer County #01HA6157928
My Commission expires December 11, 2010

Schedule 2C - Director's Statement for Not-for-Profit Applicants

Name of individual:

Ethel A. Bankert

This statement must be completed by directors of not-for-profit corporations who are not contributing capital in support of the project. The form is completed in lieu of Schedule 2B. This schedule is required for all not-for-profit Article 7 applications and for Article 28, 36 & 40 establishment applications.

Statement of Business Associations with Health Facilities

I do NOT receive any income directly or indirectly from any other health care facility.

I do receive income directly or indirectly from the following health care facilities. For each, please briefly describe the nature of the relationship and method of payment.

[Empty box for describing relationships and payment methods]

Has the original of this document been signed and notarized?

Yes

No

SIGNATURE:	DATE:
<i>x Ethel Bankert</i>	<i>9/30/10</i>
PRINT OR TYPE NAME:	
<i>Ethel G. Bankert</i>	
TITLE:	
<i>Trustee / board of Trustee</i>	
NOTARY:	DATE:
<i>Laurie M Hartman</i>	<i>9/30/10</i>

Laurie M. Hartman
Notary Public in the State of New York
Herkimer County #01HA6157928
My Commission expires December 11, 2010

CURRICULUM VITA
Esther G. Bankert

E-mail: esther.bankert@sunyit.edu

Current Position

Provost (2009-Present)
State University of New York Institute of Technology
P.O. Box 3050
Utica, New York 13504-3050
Office: (315) 792-7295
Fax: (315) 792-7555
e-mail: esther.bankert@sunyit.edu

Education

PhD University at Albany
1994 State University of New York, Albany, New York
Dept.: Education Theory and Practice
Concentration: Curriculum
Dissertation: Enhancing Moral Reasoning for Novice and Expert Nurses

MA New York University
1976 New York, New York
Major: Nursing Education

BS Mount St. Mary College
1973 Newburgh, New York
Major: Nursing

AAS Maria College
1970 Albany, New York
Major: Nursing

Registered Professional Nurse Licensure

New York State RN #226402
California (inactive status)

Professional Experience

2005-2009 *Dean and Professor*

State University of New York Institute of Technology
School of Nursing & Health Systems, Utica, NY

Graduate On-line Courses

Theoretical Foundations for Professional Nursing
Nursing Research Methods
Curriculum Development in Nursing
Evaluation Methods in Nursing

2003-2005 *Interim Dean and Professor*

State University of New York Institute of Technology
School of Nursing & Health Systems, Utica, NY

Graduate On-line Courses

Theoretical Foundations for Professional Nursing
Nursing Research Methods

2002-2003 *Professor of Nursing*

State University of New York Institute of Technology
School of Nursing & Health Systems, Utica, NY

Undergraduate course responsibility:

Theoretical Bases for Professional Nursing Practice
Accelerated Nursing Theory
Accelerated Nursing Research
Nursing Research Seminar
Culminating Seminar

Undergraduate web-based course responsibility:

Theoretical Bases for Professional Nursing Practice
Nursing Research Seminar

Graduate course responsibility:

Theoretical Foundations for Professional Nursing
Nursing Research Methods
Grant Proposal

Graduate web-based course responsibility:

Theoretical Foundations for Professional Nursing
Nursing Research Methods

1984-2002 *Associate Professor of Nursing*

State University of New York Institute of Technology
School of Nursing, Utica, NY

Undergraduate course responsibility:

Theoretical Bases for Professional Nursing Practice
Accelerated Nursing Theory
Accelerated Nursing Research
Ethical Issues in Nursing
Special Topics: Moral Dimensions for Professional Nursing Practice

Nursing Research
Nursing Leadership
Nursing Research Seminar
Culminating Seminar
Undergraduate web-based course responsibility:
Theoretical Bases for Professional Nursing Practice
Nursing Research Seminar
Graduate course responsibility:
Theoretical Foundations for Professional Nursing
Nursing Research Methods
Grant Proposal
Thesis/Project
Graduate web-based course responsibility:
Theoretical Foundations for Professional Nursing
Nursing Research Methods

1987-1988 Sabbatical Leave for Doctoral Study

University at Albany

Internship: State University of New York
Institute of Technology, School of Nursing
Program Development in Nursing Administration

1980-1983 ***Assistant Professor of Nursing***

State University of New York Institute of Technology
School of Nursing, Utica, NY

Undergraduate course responsibility:
Theoretical Bases for Professional Nursing Practice
Nursing Leadership
Nursing Research Seminar

1978-1980 ***Instructor*** (1980 Promotion to Assistant Professor)

State University of New York College of Arts and Science
Department of Nursing, Plattsburgh, New York

Undergraduate course responsibility:
Leadership in Nursing
Introduction to Research in Nursing
Team Teaching Child Care Nursing
Clinical Supervision of 8-12 Students

Committee Responsibility: Curriculum Planning and Development; Faculty Evaluation; Testing Committee; College-wide Committee for College Services (secretary, member);

Faculty Advisor

Curriculum Initiative: Developed a 2-credit elective: Circadian Rhythms

Community Service: American Lung Association

Co-developer of Survey: Assessment Feasibility of Wellness Program

1977-1978 *Instructor*

State University of New York at Albany
Department of Nursing, Albany, NY

Undergraduate course responsibility:

Medical Nursing for Adult and Child
Clinical Supervision of 8 - 12 Students

Committee Responsibility: Curriculum Planning

Curriculum Initiative: Developed Student Learning Modules

Community Services: Co-Chairperson of NYSNA District #8 Legislative
Committee; Member of American Lung Association; Participant in

Symposium: Physical Assessment of the Lung (1978); Respiratory Symposium
for Pediatrics (1977)

1976-1977 *Instructor*

Russell Sage College

Department of Nursing, Troy, NY

Undergraduate course responsibility:

Team Teaching: Fundamentals in Medical and Surgical Nursing

Leadership in Nursing for Returning RN Students

Clinical Supervision of 8 - 12 Students

Committee Responsibility: Curriculum Planning; Faculty Organization;
Student Advisement

1976 *Staff Nurse Senior*

New York University Medical Center

New York, New York

Medical Acute Care of Adults

1974-1976 *Graduate Student at NYU*

Recipient of Assistantship from National Institute of Mental Health for
Graduate Study at New York University in Nursing Education

1974-8/74 *Charge Nurse*

Cohoes Hospital

Cohoes, New York

Medical Nursing Unit for Adults

1973-1974 *Charge and Staff Nurse*

Veterans Hospital in Albany

Albany, New York

Endocrinology Unit, Adult Clients

1972 summer *Staff Nurse*

St. Joseph's Hospital

Burbank, California

Surgical Cardiac Unit, Open Heart Surgical Patients

Curriculum Initiatives

Developed the curriculum and proposal for the *Accelerated RN to BS/MS MS in Nursing Education* and the *Post-Master's Certificate in Nursing Education* programs (approved December 2008 with implementation date Fall 2009).

Developed the proposal for the *Accelerated RN to BS/MS in Gerontological Nurse Practitioner* and *Post-Master's Certificate in Gerontological Nurse Practitioner* programs (approved December 2008 with implementation date Fall 2009).

Developed the curriculum and proposal for the *MS in Nursing Education* and the *Post-Master's Certificate in Nursing Education* programs (approved Spring 2006; new program began Fall 2006).

Developed the proposal for the *MS in Gerontological Nurse Practitioner* and *Post-Master's Certificate in Gerontological Nurse Practitioner* programs (approved Spring 2006; new program began Fall 2006).

Designed the curriculum and proposal for the *Accelerated RN to BS/MS in ANP, FNP, and Nursing Administration* programs (submitted and approved 2001).

Developed select courses in totally on-line format in the graduate nursing program: Nursing Theory, Nursing Research (2000); Curriculum Development in Nursing, Evaluation in Nursing (2006).

Developed select courses in totally on-line format in the baccalaureate nursing program: Theoretical Bases for Professional Nursing Practice; Nursing Research Seminar (1998-1999).

Professional Memberships/Community Boards Currently Serving

Iota Delta Chapter of Sigma Theta Tau, International

New York State Nurses Association (NYSNA)

New York Organization of Nurse Executives (NYONE)

Nurse Executives in Education and Service (NEXES)

NYS Council of Deans in Higher Education

Professional Nurses of Central New York (PNCNY)

Leatherstocking Alliance for Research in Nursing (LeARN)

American Association of Colleges in Nursing (AACN)

International Association for Human Caring

SUNY Council for Nursing Education Task Group

New York Health Facilities Association (NYSHFA)

Board of Trustees for the Mohawk Valley Network Healthcare

Board of Directors Quality Care Committee of Faxton/St. Luke's Healthcare

Board of Directors Continuing Care Committee of Faxton/St. Luke's Healthcare

Board of Directors St. Elizabeth College of Nursing

Results Council of Faxton/St. Luke's Healthcare for Relationship-based Care

Mohawk Valley Community College Nursing Advisory Board

Maria College Nursing Advisory Board

Committee Memberships Currently Serving

College-wide Assessment Committee

Graduate Council

Enrollment Management Committee

Enrollment Steering Committee

Academic Council

Dean's Leadership Council

Assessment Committee School of Nursing & Health Systems

Curriculum Committee School of Nursing & Health Systems

Marketing & Community Liaison Committee School of Nursing & Health Systems

College-wide Committee Memberships Previously Held

Academic Computing Committee

Assessment Committee

Curriculum Committee

Graduate Council (Secretary 1997-1998)

Middle States Accreditation Steering Committee

Search Committee for Vice President for Academic Affairs (SON Representative 1999-2000)

Search Committee for Vice President for Academic Affairs (Faculty Assembly Representative 2000-2001)

Search Committee for Assistant Director of Student Activities

Human Subjects Committee

Fall/Spring Open House Participate Annually

School Committee Memberships Previously Held

Academic Standards Committee (Co-chairperson)

Assessment Committee (Chairperson, 2002)

Undergraduate Curriculum Committee (Chairperson)

Graduate Curriculum Committee (Chairperson)

Curriculum Committee (Member, 2002)

Recruitment Committee

Personnel Committee

Search Committee for ISET Dean (2007-2008)

Search Committee for SON Dean (1990/1991; 2000)

Search Committee for Faculty Positions (Chairperson, 2002)

Vice-chairperson, Nursing Faculty Organization, School of Nursing

Library Liaison

Special Appointment by the Vice President for Academic Affairs to Represent Dean and School of Nursing June – December 1999 during Dr. Walker's absence.

Recruitment Activities

Job Fair and Recruitment Career Fair, Latham

Maria College, Information Sessions

Open House and Recruitment at VA Hospital, Albany

St. Peter's Hospital Open Sessions, Albany

Senior Class at Samaritan Hospital, Troy
Rome City Hospital Information Session
St. Joseph School of Nursing, Open House, Syracuse
Presenter on Professionalism in Nursing to Senior Class, St. Joseph School of Nursing, Syracuse
St. Elizabeth College of Nursing, Utica
Mohawk Valley Community College at Freshman Orientation Sessions and Senior Class
Hudson Valley Community College, Senior Classes (annually)
Crouse Hospital School of Nursing, Faculty and Senior Class
Ellis Hospital, Schenectady
St. Elizabeth Medical Center

Scholarly Activities: Publications

Bankert, E., Josphe, J., & Sellers, K. (2010). Chapter: Global initiatives for service- based learning among faculty and students. In *Global Giving Through Teaching: How Nurse Educators Are Changing The World*, NLN Foundation and Springer Publishing.

Bankert, E. (2009). Letter to the editor: Nurse-to-nurse abuse: *Learned behavior*. *American Nurse Today*, 4(1), 6.

Bankert, E., & Kozel, V. (2005). Transforming pedagogy in nursing education: A caring learning environment for adult students. *Nursing Education Perspectives*, 26(4), 227-229.

Bankert, E. (2002). Care and traditional ethics: Enhancing the development of moral reasoning among nurses. *International Journal for Human Caring*, 6(1), 25-33.

Bankert, E. G. (1994). *Enhancing moral judgment for novice and expert nurses*. University at Albany. Doctoral Dissertation (UMI 9516355).

Spencer, R., Nichols, L., Lipkin, G., Waterhouse, H., West, F., & **Bankert, E.** (1986).

Clinical pharmacology & nursing management (2nd ed.). Philadelphia: Lippincott.

Chapters authored in textbook:

Bankert, E. *Chapter 2: Drug Preparations, pp. 10-18.*

Bankert, E. *Chapter 10: Interactions between Food and Medications, pp. 108-114.*

Spencer, R. & **Bankert, E.** *Chapter 29: Drugs Affecting the Gastrointestinal System, pp. 605-655.*

Bankert, E. *Chapter 43: Drug Therapy in Pediatric Nursing, pp. 1025-1030.*

Bankert, E. & Spencer, R. *Chapter 47: Self-Medication with Over-the-Counter Drugs, pp. 1059-1068.*

Waterhouse, H., **Bankert, E., & Lipkin, G.** *Chapter 48: Alternatives to Drug Therapy, pp. 1069-1093.*

Nichols, L., Lipkin, G., & **Bankert, E.** *Chapter 49: Clinical Examples of Multiple Drug Use, pp. 1094-1116.*

Spencer, R., Nichols, L., Lipkin, G., Waterhouse, H., West, F., & **Bankert, E.** (1986).

Instructor's manual: Clinical pharmacology & nursing management (2nd ed.). Philadelphia: Lippincott.

Spencer, R., Nichols, L., Lipkin, G., Waterhouse, H., West, F., & **Bankert, E.** (1986).

Student workbook: Clinical pharmacology & nursing management (2nd ed.). Philadelphia: Lippincott.

Spencer, R., Nichols, L., Waterhouse, H., West, F., & **Bankert, E.** (1983).

Clinical pharmacology & nursing management. Philadelphia: Lippincott.

Chapters authored in textbook:

Bankert, E. *Chapter 2: Drug Preparations, pp. 12-23.*

Bankert, E. *Chapter 8: Food and Drug Interactions, pp. 86-92.*

Spencer, R. & Bankert, E. *Chapter 29: Drugs Affecting the Gastrointestinal System, pp. 561-599.*

Bankert, E. *Chapter 43: Problems in Pediatric Medication, pp. 923-928.*

Bankert, E. & Spencer, R. *Chapter 47: Self-Medication with Over-the-Counter Drugs, pp. 953-963.*

Waterhouse, H., Bankert, E., & Lipkin, G. *Chapter 49: Alternatives to Drug Therapy, pp. 975-999.*

Nichols, L., Lipkin, G., & Bankert, E. *Chapter 50: Clinical Examples of Multiple Drug Use, pp. 1000-1023.*

Spencer, R., Nichols, L., Waterhouse, H., West, F., & Bankert, E. (1983).

Instructor's manual: Clinical pharmacology & nursing management. Philadelphia: Lippincott.

Scholarly Activity: Monographs

CAREST Associates **Bankert, E. & Torok, C.** (1997, November). *Evaluation Report. Comprehensive Clinical Information System for SICU/MICU Patient Care Project. Stratton Veterans Administration Medical Center at Albany, New York. Final Report: Implementation Phase B/Post Implementation: January 1 to August 31, 1997.* Marcy, NY: Author.

CAREST Associates **Bankert, E. & Torok, C.** (1997, May). *Evaluation Report. Comprehensive Clinical Information System for SICU/MICU Patient Care Project. Stratton Veterans Administration Medical Center at Albany, New York. Implementation Phase A: June 3 to December 31, 1996.* Marcy, NY: Author.

CAREST Associates **Bankert, E. & Torok, C.** (1996, August). *Evaluation Report. Comprehensive Clinical Information System for SICU/MICU Patient Care Project. Stratton Veterans Administration Medical Center at Albany, New York. Preliminary/Pre-Implementation Phase 1: May 1995 to June 2, 1996.* Marcy, NY: Author.

Scholarly Activity: Proceedings

Bankert, E. (1998). *Embracing Care: Ethics Education for Nurses* paper and poster presentations at the 21st International Nursing Caring Conference: Cultural Diversity in the New Millennium, April 18-20, 1998 in San Antonio, Texas, with abstract published in the International Association for Human Caring Proceedings, 1998.

Bankert, E. (1996). *Care Models and Principled Reasoning for Hospital-based Nurses* presentation at Research Symposium at California University at Bakersfield, Departments of Nursing and Philosophy, and published in Xi Epsilon Chapter Research Proceedings, Bakersfield, CA (1996).

Torok, C. & in collaboration with SUNY IT School of Nursing Assessment Committee:

Bankert, E., Britton, C., Walker, E. K., Shaw, M., & McKinley, B. (1995). *Student, faculty, and staff roles in and out of classroom: Using a computer skills survey to assess and plan for needs of adult learners in undergraduate and graduate nursing programs.* In Kramer, P., Sullivan, E.,

Pijano, V., & Shenouda, W. CIT95, Presentations at the Fourth Conference on Instructional technologies: New learning & teaching challenges for a world in transition---responding to change (pp. 135-136). Albany, NY: State University of New York, Office of University Relations.

Bangert-Drowns, R. & Bankert, E. G. (1990). *Meta-analysis: Critical thinking and direct instruction*. Published in the AERA Conference Proceedings in Boston, MA, Spring Issue, 1990.

Editor

Abstract Editor (2001). *The 29th Annual Conference of the State Society on Aging of New York State. Fall 2001 Conference Program: Health and Harmony in Aging* (Summer and Fall 2001).

Reviewer

Dissertation Committee Member for Doctoral Student, Amy Shaver, at SUNY Binghamton School of Nursing (2002-present).

Outside Reviewer for funded Research Study: Lived Experience of Patients Undergoing Conscious Sedation by Barbara Brady (April 2002-August 2002).

Thesis Committee Reviewer for Albanese, Eileen: *Implementing total quality management (TQM): Continuous quality improvement (CQI) in a cardiac catheterization laboratory* (Fall 1994).

Thesis Committee Chairperson for Wagner, Barbara: *Collective bargaining and turnover rates of nurses in acute care settings* (Fall 1991).

Thesis Committee Chairperson for Nasuta, Maryann: *Verbal abuse and the impact on nurses* (Spring 1991).

Thesis Committee Chairperson for Vitale, Frances: *Evaluation of patient classification system for critical care* (Spring 1990).

Thesis Committee Reviewer for Stone, Susan: *An investigation of nurse-physician communication and role conflict in a practice setting* (Fall 1989).

Unpublished Papers

Bankert, E. (2002). Computers at the Bedside: Its Impact on Nursing Care Activities. Manuscript re-submitted for review 3/02 to peer-reviewed journal, *American Journal of Nursing*.

Bankert, E., Slagle, P., & Mathis, T. (2002). Managing Chronic Fatigue through Vitamin D Treatments. Manuscript prepared for nurse practitioner journal.

Bankert, E. & Mullick, R. (1995). *Pilot Study on Duration of Instructional Time and Critical Thinking Skills among RN Students*.

Unpublished Report submitted with the Accreditation Report for NLN Site Visit, Fall 1995.

Torok, C. & in collaboration with SUNY IT School of Nursing Assessment Committee:

Bankert, E., Britton, C., Walker, E. K., Shaw, M., & McKinley, B. (1995). *Student, faculty, and staff roles in and out of classroom: Using a computer skills survey to assess and plan for needs of adult learners in undergraduate and graduate nursing programs*. Unpublished paper.

Evaluation '95, Evaluation for a New Century: A Global Perspective. American and Canadian Evaluation Associations International Meeting and Conference, Vancouver, British Columbia, Canada, November 3, 1995.

Research and Grants

Co-Directors, Dr. Bankert and Dr. Dean-Kelly, Renewal of Contract Grant with Finger Lakes Geriatric Education Consortium (FLGEC). **Funded for \$180,000 over 3 year project at \$60,000 annually (2007-2010).**

(Year one 2007-2008 funded at 60,000; year two 2008-2009 funded at \$60,000; year three funded at \$59,000).

Director, Dr. Bankert, in collaboration with Dr. Kathleen Sellers and Dr. Dean-Kelly, Statewide High Needs Program Grant for SUNYIT Nursing program at Ulster CC site; **Funded \$159,000 (2009-2010); and Renewal of High Needs Grant at 154,000 (2009-2010).**

Director, Dr. Bankert, in collaboration with Dean-Kelly, L. & Zawko, P. Statewide High Needs Program Grant for Nursing Programs at SUNYIT; **Funded \$278,000 (2008-2009).**

Director, Dr. Bankert, in collaboration with Dean-Kelly, L. & Zawko, P. Statewide High Needs Program Grant for Nursing Programs at SUNYIT; **Funded \$165,000 (2007-2008).**

Director, Dr. Bankert, in collaboration with Dean-Kelly, L. & Zawko, P. Statewide High Needs Program Grant for Nursing Programs at SUNYIT; **Funded \$115,000 (2006-2007).**

Co-Directors, Dr. Joseph and Dr. Bankert, Contract Grant with Sitrin Health Care for 3 year project on Montessori/Care Approach for Enhancing Quality of Life among Residents with Dementia. Proposal for \$170,000 submitted January 2007. Award not funded.

Co-Director, Dr. Bankert and Dr. Dean-Kelly Contract Grant with Finger Lakes Geriatric Education Center. Approved for 5 year project at \$300,000 (2005). **Awarded \$60,000 for year one, 2005-2006, only.**

Co-Director, Dean-Kelly, L. & Bankert, E. Title VIII, Advanced Education Nursing Traineeship Program. **Awarded \$39,990 for 2007-2008.**

Co-Director, Dean-Kelly, L. & Bankert, E. Title VIII, Advanced Education Nursing Traineeship Program, **Awarded \$39,043 for 2006-2007.**

Co-Director, Dean-Kelly, L & Bankert, E. Title VIII, Advanced Education Nursing Traineeship Program, **Awarded \$37,898.00 for 2005-2006.**

Co-Director, Bankert, E. & Dean-Kelly, L. Title VIII Advanced Education Nursing Traineeship (AENT) Proposal for Continuing Grant 2A10HP00317-03. **Awarded, \$37,913 for 2004-2005.**

Co-Director, Bankert, E. & Dean-Kelly, L. (2005). Consortium to Advance Nursing Education (CANE), Title VII Nurse Education, Practice & Retention Grant Program for \$1,159,621,000 (Proposal submitted 12/05; not funded).

Co-Director, Bankert, E. & Dean-Kelly, L Consortium for the Advancement of Baccalaureate Education for Nurses (CABEN), Title VII Nurse Education, Practice & Retention Grant Program for \$734,730. (Proposal submitted 12/04; not funded).

Contributor, St. Peter's Hospital Health Workforce Retraining Initiative Proposal; Grant funded 8/2/02 and Implemented Summer 2003-Spring 2006. **Project Funded** through St. Peter's Hospital.

Co-PI, Evaluation and Research Consultation Services for the Comprehensive Clinical Information System for SICU/MICU Patient Care at the Samuel S. Stratton Veterans Affairs Medical Center, Albany, New York (1995-1997). Pre-Implementation Report 1 submitted

12/1995; Implementation Phases I and II: Report 2 submitted 8/1997; and Final Evaluation Phase: Report 3 submitted 12/1997. **Awarded \$34,500.**

Co-Director, Bankert, E. & Torok, C. Project: School Nurse Orientation (SNO) Program in New York State. Research Evaluation Project conducted 2002. **Awarded \$20,000.**

Co-Directors, Bankert, E. & Torok, C., (March 2002). Through the Research Foundation of the State University of New York, State University Institute of Technology School of Nursing, Drs. Bankert and Torok for the *Research and Evaluation Project: School Nurse Orientation (SNO) Program in New York State* co-sponsored by New York State Education Department, The New York State Association of School Nurses (NYSASN), New York State Nurses Association (NYSNA), and SNO Faculty members. Research Evaluation Project conducted March through August, 2002. **Awarded \$19,999.**

Bankert, E., Slagle, P. & Mathis, T. (May 2001). **Recipients of \$1650 Faculty Grant** from College Foundation at SUNY Institute of Technology for a retrospective study on the *Effect of Vitamin D Treatment and the Resolution of Chronic Fatigue among Adults*. Study conducted: Summer-Fall, 2001. Summary report of project submitted to Dr. Ron Sarner, Vice President for Academic Affairs 2/02.

Bankert, E., Slagle, P., Hayes, D., & Pagano, G. (May 1997). **Recipients of \$1500 Faculty Grant** from College Foundation at SUNY Institute of Technology for a pilot study: *Health Promotion Project: Zone Nutritional Plan for Young through Older Adults* (Summer and Fall Project, 1997). Report submitted to Dr. Van Marter, Vice President for Academic Affairs, 4/98.

Bankert, E., Hayes, D., Slagle, P., & Pagano, G. (May 1997). **Recipient of \$500 Grant** from Iota Delta Research Activities Committee to supplement pilot study: *Health Promotion Project: Zone Nutritional Plan for Young through Older Adults* (Summer and Fall Project, 1997). Report submitted to Iota Delta Chapter, Research Awards Committee, April 1998.

CAREST Associates **Bankert, E. & Torok, C. (1995-1997).** **Awarded \$34,500** for Research Evaluation Consultation Services for the "Comprehensive Clinical Information System for SICU/MICU Patient Care" at the Samuel S. Stratton Veterans Affairs Medical Center, Albany, New York (1995-1997). *Pre-Implementation Report 1* submitted December 1995; *Implementation Phases I and II: Report 2* completed and submitted August 1997; and *Final Evaluation Phase: Report 3* completed and submitted December 1997.

Torok, C., Bankert, E., & Mullick, R. (May 1996). **Recipients of \$1600 Faculty Grant** from College Foundation to continue with the longitudinal study: *The Exploration of Critical Thinking Among Entering and Exiting Students in Nursing Programs at the Undergraduate and Graduate Levels. A longitudinal study to research the outcome of critical thinking as measured by the California Critical Thinking Skills Test and California Critical Thinking Disposition Inventory, and to participate in a national study to explore these outcomes.* Report submitted to Executive Vice President of Academic Affairs, April 1997.

Bankert, E., Mullick, R., & Torok, C. (April 1995). **Recipient of \$1000 Faculty Grant** from College Foundation at SUNY Institute of Technology for a study on the *Impact of Instructional Design on Critical Thinking Skills of Baccalaureate RNs in a Nursing Research Course.* Report submitted to Executive Vice President of Academic Affairs, August, 1995.

Presentations: International/National

Bankert, E. & Simmons, N. *Caring in Cyberspace: Networks of Support Systems* to be presented at 24th International Association for Human Caring: **Creating Caring**

Environments sponsored by MGH Institute of Health Professionals, Boston, MA, May 23-24, 2002 (poster).

Bankert, E. *Caring Models and Moral Presence: Advancing Principled Reasoning among RN Baccalaureate Students* at **Mosby's Faculty Development Institute 2001**, Teachers-Partners in Change-Learners, sponsored by Mosby Continuing Education and Training, at Caesar's Palace, Las Vegas, NV, January 3-6, 2001 (poster).

Bankert, E. *Embracing Care: Ethics Education for Nurses* presented at **21st International Association for Human Caring Conference** hosted by The University of Texas Health Science Center at San Antonio, Texas, April 19-20, 1999 (paper and poster).

Bankert, E., & Torok, C. *A Pilot Study: Implementing a Comprehensive Clinical Information System in ICU* presented at the **Eastern Nursing Research Society 11th Annual Scientific Sessions**, hosted by New York University, School of Education, Division of Nursing, at the World Trade Center, New York City, April 9-11, 1999 (poster).

Bankert, E. *Enhancing Principled Reasoning for RN Baccalaureate Students* presented at Emory University, Atlanta, Georgia, sponsored by the **Association for Moral Education (AME)** October 1997 (paper).

Bankert, E. *Direct Instruction in Caring for Ethical Decision-Making* presented at **21st Annual Workshop Creative Teaching for Nursing Educators**, sponsored by the University of Tennessee, Memphis, TN, March 17-19, 1996 (poster).

Bankert, E. *Enhancing Moral Judgment for Novice and Expert Nurses* presented at **Sigma Theta Tau International 33rd Biennial Conference**, Detroit, Michigan, November 6, 1995 (paper).

Bankert, E. *Moral Development for Nurses* presented at the **NYSNA Convention**, Lake Placid, NY, October 1995 (poster).

Bankert, E. *Moral Reasoning for Novice and Expert Nurses* presented at the **Fifth Annual Institute on Critical Thinking**, Nursing Education Innovation Center, University of New Hampshire, Durham, NH, June 23-28, 1995 (poster).

Presentations: Regional

Bankert, E. *Study of Care Models in Ethics Education* presented at **Tri-Chapter Research Day** Intervention Research: Conducting Research Relevant to Practice sponsored by Iota Delta, Omicron, and Omicron Alpha Chapters of Sigma Theta Tau International, April 28, 1999 (poster).

Bankert, E. & Torok, C. *A Pilot Study: Implementing a Comprehensive Clinical Information System in ICU* presented at **Tri-Chapter Research Day** Intervention Research: Conducting Research Relevant to Practice sponsored by Iota Delta, Omicron, and Omicron Alpha Chapters of Sigma Theta Tau International, April 28, 1999 (poster).

Bankert, E. *Embracing Care in Ethics Education* presented at **Nursing Teaching Day** sponsored by SUNY Health Science Center at Syracuse, Nursing Alumni Association, Omicron Alpha Chapter of Sigma Theta Tau International, College of Nursing, October 23, 1998 (paper).

Bankert, E. *The Art and Science of Therapeutic Touch* presented at the **Nurse Education Day**, SUNY, College of Delhi, NY, June 19, 1996 (paper).

Bankert, E. *Enhancing Moral Reasoning for Ethical Decisions* presented at the **Association of Community Health Directors and Associate Directors for the Northeast Region of New York State**, Latham, NY, April 1995 (paper).

Bankert, E. Ethics and Home Health Care presented at the **Visiting Nurses Association of Albany, Inc.**, Albany, NY, April 1995 (**paper**).

Bankert, E. *Moral Reasoning for Novice and Expert Nurses* presented at **Mary Imogene Bassett Hospital's Annual Nurses Research Evening** at Fly Creek Conference Center, October 1993 (**poster**).

Bankert, E. *Ethical Decision Making for Health Care Professionals* presented at **Nurse Education Day, SUNY College of Technology at Delhi** sponsored by Continuing Education and Department of Nursing, Delhi, NY, April 1993 (**paper**).

Bankert, E. *Frameworks in Moral Judgments* presented at **Mary Imogene Bassett Nurse Research Evening**, Cooperstown, NY, October 1992 (**paper**).

Bankert, E. *Continuing Education for Nurses* presented at **Albany Medical School of Nursing**, Albany, NY, October 16, 1984 (**paper**).

Presentations: Local

Bankert, E. Panel Presentation on *Advancing Education in Nursing* at **St. Elizabeth College of Nursing**, April 24, 2009.

Bankert, E. *Longitudinal Study on Moral Judgment*, October 2007 (Guest Lecturer).

Bankert, E. *Death and Dying: Anticipatory Grief*, April 2003 (Guest Lecturer).

Bankert, E., and Victoria Kozel: *Creating a Caring Learning Environment for the Adult Learner* at the Mohawk Valley Nursing Education Consortium, "Mentoring & Motivating: The M&M's of Teaching" at SUNYIT, April 4, 2003 (**poster**).

Bankert, E. and Nancy Simmons: *Caring in Cyberspace* at the Mohawk Valley Nursing Education Consortium, "Mentoring & Motivating: The M&M's of Teaching" at SUNYIT, April 4, 2003 (**poster**).

Bankert, E. and Wranesh Cook, ML: *Guided Reflection and Ideal Practice: Uncovering and Actualizing Research Utilization In Advanced Practice* at the Mohawk Valley Nursing Education Consortium, "Mentoring & Motivating: The M&M's of Teaching" at SUNYIT, April 4, 2003 (**poster**).

Bankert, E. and Wranesh Cook, ML: *Research Utilization in Nursing Practice and Education* at the Mohawk Valley Nursing Education Consortium, "Mentoring & Motivating: The M&M's of Teaching" at SUNYIT, April 4, 2003 (**poster**).

Bankert, E.: *Enhancing Moral Reasoning for RN Students* Fall 2002 (Guest Lecturer).

Bankert, E. *Embracing Care in Ethics Education* presented at the **Sigma Theta Tau, Iota Delta Chapter Research Day**, Utica, April 24, 1998 (**paper**).

Bankert, E. *Enhancement of Moral Judgment: Contextual and Decontextual Approaches for Novice and Expert Nurses* at SUNY IT School of Nursing Graduate Students in Research Methods, April 1995 (**paper**).

Bankert, E. *Therapeutic Touch* presented at the **Cancer Teaching Day**, Utica, NY, March 12, 1986 (**paper**).

Bankert, E. *Therapeutic Touch Workshop* presented at **Rome City Hospital In-service Department**, Rome, NY, May 20 and 27, 1986 (**workshop**).

Bankert, E. *Therapeutic Touch* presented at **Faxton Hospital for Oncology Nurses**, Utica, NY, April 1985 (**paper**).

Bankert, E. *Therapeutic Touch* presented at **St. Elizabeth Hospital, In-service Department**, Utica, NY, Feb. 24, 1985 (**paper**).

Bankert, E. *Therapeutic Touch* presented at **Holistic Nurses Association**, St. Luke's Hospital, Utica, NY, June 21, 1984 (**paper**).

Bankert, E. *Therapeutic Touch* presented at SUNY Utica/Rome, sponsored by **Holistic Nurses Association**, Utica, NY, February and October, 1982 (**paper**).

Bankert, E. *Therapeutic Touch* presented at St. Luke's Hospital, Utica, NY sponsored by **Holistic Nurses Association**, October 20, 1982 (**paper**).

Bankert, E. *Therapeutic Touch* presented at SUNY College of Technology, **Institute for Promotion of Wellness**, Utica, NY, Sept. 25, 1981 (**paper**).

Service: Academic Advisory Councils

Member, St. Elizabeth College of Nursing Board of Trustees (2004-present).

Member, MVCC Nursing Advisory Board (2005-present).

Member, Crouse School of Nursing Advisory Board, Syracuse (2006-present).

Member to the Advisory Council of the Nursing Department, SUNY College of Technology at Delhi for 3 consecutive terms, served from 1994- 2002.

Recipient of State University of New York College of Technology at Delhi Certificate In Recognition of Service to the College as a Member of the Academic Advisory Council of the Nursing Department, awarded December 2001.

Service: Special Events

Commencement Speaker, St. Elizabeth College of Nursing Graduation May, 2006,

Key Note Speaker at Omicron Alpha of Sigma Theta Tau International Induction Ceremony presented *Excellence in Nursing* Syracuse, NY, May 20, 2000.

Service: Consultant

Reviewer for funded Research Study: *Lived Experience of Patients Undergoing Conscious Sedation* by Barbara Brady (Report submitted August 2002).

Consultant for Regents External Degree for establishing construct and criterion-related validity of test items and measurements for graduate nursing theory content (1998-1999).

CAREST Associates (Drs. Bankert & Torok). Evaluation Consultants for federally funded project *Comprehensive Clinical Information System for SICU/MICU Patient Care* at the Samuel S. Stratton Veterans Affairs Medical Center, Albany, New York from 1995-1997.

Health Educator for St. Paul's School health classes for grades 3rd, 4th, 5th, and 6th (1994).

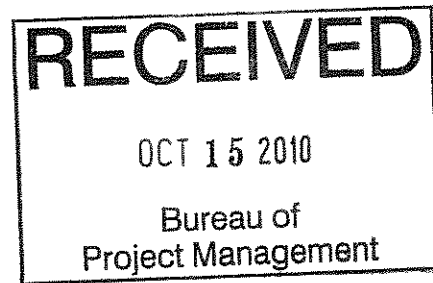
Consultant for Ethics Subcommittee: A Special Interest Group for Nurses at Imogene Bassett Hospital, Cooperstown, NY, (1993-1994).

October 5, 2010

New York State Department of Health
Bureau of Project Management
433 River Street, 6th Floor
Troy, NY 12180-2299

Attn: Mr. Christopher Delker
Health Program Administrator IV
Division of Health Facility Planning

RE: CON #092142 Mohawk Valley EC, LLC



Dear Mr. Delker:

I feel it is my duty to inform your office of some misrepresentations by this group regarding the need for free standing endoscopy center.

While the doctors state there is a 3-month backlog, this is not entirely true. They choose to see only New patients when they are in the office. If you were to call you would be able to get an appointment within 2 weeks if you were a new patient. The RNP's and PA's do have a 6-week wait time. They are the one's designated to seeing returning patients. It is also true that you would be able to schedule your procedure within 1-2 months of your appointment not the additional 3 months as stated at your meeting.

The doctors do see Medicaid patients that is true. Until a few years ago they would only see them as a consult in the hospital. Now they have a system to try to even out the Medicaid to each doctor with the one for you one for me method. They do not like to see these patients, as the reimbursement is very low. Most call these patients derogatory names also.

Their office has undergone many changes in the last year. Primarily friends and family of the COO have been entrusted with jobs and duties. The office cleaning is one of those jobs. Sad to say it has not been done to Dept of Health standards. All that is done is emptying garbage on a daily basis. Do not know if patient rooms are cleaned on a daily or even weekly basis. Patient bathrooms are not up to par.

Many patients including myself are complaining quite strongly and taking their business to other facilities. I do not believe that recruiting will magically be accomplished by having this ambulatory service. They must look at their own management and values in order to recruit quality physicians. Then they will able to attract above average doctors. Everything they have done is profit orientated. I think they do need to make a profit but

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at what expense? Ordering unnecessary tests (CT scans, small bowel capsule studies, u/s) is just one way they are doing this.

I have heard that the meetings with the hospital are usually hostile conversations between physicians and management. Ask anyone in Endo.

Please investigate this further before rendering your decision. Allegedly, the COO has been asked to resign after an internal audit. He is no longer employed by Digestive Disease.

Study: The region could lose 60,000 residents in the next 25 years, while numbers grow elsewhere

New forecast predicts plummeting population



U.S. Census 1990 and 2000; Cornell University PAD Projections

By JENNIFER BOGDAN, BRYON ACKERMAN and DAN MINER

Observer-Dispatch
infocenter@uticaod.com

After seeing the population losses that resulted from the closure of an Air Force base and multiple manufacturing plants in the last 20 years, many Mohawk Valley residents thought the worst was over.

What if it wasn't?

Much of Upstate New York is on track for a gradual population decline lasting for at least another 25 years, with the Mohawk Valley taking a particularly tough hit, according to a recent study by the Cornell University Program on Applied Demographics.

According to the study, Oneida County is on track to lose another 42,500 residents between today and 2035, and Herkimer County stands to lose more than 17,500 in that

a city the size of Utica between the two counties in the next 25 years. And all this would be occurring even as populations downstate and across the country continue to soar, the study says.

One development expert said the predictions are spot on.

Peter Fleischer, executive director of the nonprofit Empire State Future planning agency in Albany, said Upstate New York is rapidly losing residents and watching the quality of its streets and pipes decline because urban sprawl is ruining cities.

"It's a looming disaster," Fleischer said. "We're in this mode where we have sprawl without growth. It's not just a problem with aesthetics. It's a problem with declining population."

The Cornell study looked at existing population trends based on numbers of births and deaths and in-migration and out-migration. Unlike much of the rest of the country,



State Hospital Review and Planning Council

Project # 092142-B

Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center

County: Oneida (Utica)

Program: Ambulatory Surgery Center

Purpose: Establishment and Construction

Submitted: November 13, 2009

Executive Summary

Description

Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center (MVEC), a recently formed limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC). MVEC will be certified as a single-specialty freestanding ambulatory surgery center (FASC) in the discipline of gastroenterology, providing endoscopy and colonoscopy services.

The proposed members of Mohawk Valley EC, LLC are:

Proposed Owner	Ownership
Stanley P. Weiselberg, M.D.	14.2857%
Norman R. Neslin, M.D.	14.2857%
Robert R. Pavelock, M.D.	14.2857%
Bradley F. Sklar, M.D.	14.2857%
Richard Cherpak, M.D.	14.2857%
Brett Gandhi, M.D.	14.2857%
Garth J. Garramone, D.O.	14.2858%

In response to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area, one objection was received (Faxon St. Luke's Healthcare - FSLH). The Department finds that the information submitted by FSLH in opposition to this application does not provide a sufficient basis for reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

Total project costs are estimated at \$1,640,957.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

All seven gastroenterologists are partners in Digestive Disease Medicine of Central New York, LLP (DDM). They will continue to perform outpatient endoscopies at the 4 area medical facilities (St. Elizabeth Medical Center; Faxon-St. Luke's Healthcare-Faxon Division; Faxon-St. Lukes Healthcare-St. Lukes Division and Oneida Healthcare

Center), but will add Mohawk Valley EC into their current rotation.

DDM reports that there is a current backlog of 5,000 to 7,000 outpatient gastroenterology procedures in their service area. In order to reduce this backlog, they plan to recruit two new physicians in the next twelve months. The proposed ASC is considered essential to successfully recruit additional physicians and to have sufficient capacity to meet the growing demand for colorectal screenings.

Program Summary

The applicant will enter into a transfer and affiliation agreement for emergency and back-up services with Faxon-St. Luke's Healthcare, which is 1.5 miles or five minutes in travel time from the Center.

Based on the information reviewed, staff have concluded the proposed managers of the LLC are persons of good moral character whose training and experience demonstrate competency to operate an ambulatory surgery center.

Financial Summary

Total project cost of \$1,640,957 consists of moveable equipment and will be met with \$164,096 in cash and a \$1,476,861 seven year loan at 6.75% from M&T Bank.

Budget:	Revenues:	\$ 4,111,622
	Expenses:	<u>3,038,431</u>
	Gain/(Loss):	\$ 1,073,191

Subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project involves the construction of an 11,436 SF freestanding single-specialty ambulatory surgery center to perform endoscopies. The facility will be constructed in space located on the second floor of an existing office building.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended 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 sponsors whose applications require review by the State Hospital Review and Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department beginning in the second year of operation. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the Center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the Center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of an executed transfer and affiliation agreement that is acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a staffing plan, acceptable to the Department, confirming that staff of the Center will be separate and distinct from staff of other entities. [HSP]
7. Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities. [HSP]
8. Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space. [HSP]
9. Submission of documentation, acceptable to the Department, that the clinical space will be used exclusively for this purpose. [HSP]
10. Submission of an agreement, acceptable to the Department, regarding the provision of quality oversight functions. [HSP]
11. Submission of evidence of a protocol ensuring all physicians practicing at the ASC commit, in writing, to maintain in good standing any responsibilities with all acute care hospitals where privileges have been granted. [HSP]
12. Submission of a bank loan commitment for the applicant's financing acceptable to the Department. [BFA]
13. Submission of a working capital loan commitment acceptable to the Department. [BFA]
14. Submission of an executed lease agreement acceptable to the Department. [BFA]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01 (AER).

2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction (AER).
3. The applicant shall complete construction by February 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner.

State Council Recommendation

August 5, 2010.

SHRPC: The motion to defer the project failed with 14 members in favor of deferral and 3 abstentions. (Sixteen (16) votes in favor of a motion are needed to carry the motion.) No further motions were made. The project moves forward to the August 31, 2010 Public Health Council without a recommendation.

Need Analysis

Background

Mohawk Valley EC, LLC (MVEC) plans to operate an ambulatory surgery center specializing in endoscopy services. The proposed center will have four operating rooms.

There are seven gastroenterologists that have committed to perform the following volume of procedures at the proposed center:

<u>Physicians</u>	<u>Annual Procedures</u>
Stanley Weiselberg	815
Norman Neslin	850
Robert Pavelock	850
Bradley Sklar	850
Richard Cherkpak	850
Brett Ghandi	850
Garth Garramone	875
<i>Total</i>	<i>6,000</i>

<u>Existing FASCs – Central New York</u>	<u>County</u>	<u>2008 Utilization</u>
Digestive Disease Center of CNY, LLC	Onondaga	NR
Endoscopic Procedure Center	Onondaga	4,243
Harrison Center Outpatient Surgery	Onondaga	3,869
North Country Orthopedic ASC	Jefferson	1,898
Specialists' One-Day Surgery	Onondaga	9,240
Specialty Surgery Center of CNY	Onondaga	6,905
Syracuse Endoscopy Associates	Onondaga	6,133

SOURCE SPARCS

MVEC reports that three of the seven gastroenterologists in the Digestive Disease Management (DDM) practice are over 57 years of age. DDM has been unable to recruit new gastroenterologists for the last seven years. The applicants report that they need to have an ambulatory surgery center in order to recruit new gastroenterologists to their practice.

The DDM group's seven physicians currently perform approximately 20,000 outpatient procedures per year. DDM anticipates adding two new physicians within the next year. The applicant reports that each physician added to the practice will increase the surgical volume by 2,000 to 3,000 procedures.

DDM reports that it has a 10 to 14 week waiting list for endoscopy procedures, with approximately 500 patients waiting each week. The physicians estimate that there is a current backlog of 5,000 to 7,000 outpatient procedures in their service area.

DDM expects significant growth in screening colonoscopies and other outpatient endoscopic procedures, based on the area's aging population and an increasing focus on preventive medicine.

DDM's physician practice has not had an opportunity to meet the service needs of adjacent counties such as Lewis and Chenango because the physicians are currently overextended serving patients from the three core counties they serve (Oneida, Herkimer and Madison). According to data from the Expanded Behavioral Risk Factor Surveillance System (BRFSS) Report: July 2008 – June 2009 (Age Adjusted), in counties outside New York City 66.3 percent of adults aged 50 and older reported having a sigmoidoscopy or colonoscopy within the past 10 years. The chart below shows the results for the five county areas around Utica where DDM's proposed facility will be located.

Adults Aged 50+ Having a Sigmoidoscopy or Colonoscopy within the Past 10 years (Age Adjusted)	
<i>County</i>	<i>Percent</i>
Oneida	66.2%
Chenango	51.3%
Herkimer	59.8%
Lewis	45.8%
Madison	69.6%
New York State Outside NYC	66.3%

SOURCE: Behavioral Risk Factor Surveillance System (BRFSS)

DDM states that outside the two counties (Oneida and Madison) that are primarily served by DDM, the other counties are below average for colorectal screenings.

The applicant states that the proposed ambulatory surgery center and the recruitment of additional gastroenterologists will lead to the expansion of gastroenterology services for this five county region. The primary population targeted for colorectal screening (ages 50 – 75) is projected to increase by 9,103 (7.4 percent) in the five county area which DDM's proposed facility will serve.

Population Projections by County: Age 50 – 74				
<i>County</i>	<i>2010</i>	<i>2020</i>	<i>Change</i>	<i>Percent</i>
Chenango	15,199	16,200	1,001	6.6%
Herkimer	18,331	19,412	1,081	5.9%
Lewis	7,242	7,920	678	9.4%
Madison	19,280	21,218	1,938	10.1%
Oneida	63,183	67,588	4,405	7.0%
Total	123,235	132,338	9,103	7.4%

SOURCE: Cornell University Program on Applied Demographics New York State and County Population Projections by Age and Sex – Preliminary Population Projections by Age and Sex, New York State and 62 counties, 2005 – 2035.

DDM estimates that to bring Chenango, Lewis and Herkimer Counties up to the Upstate New York rate of colorectal screenings, the practice would need to perform an additional 4,956 colorectal screenings for these three counties.

The data indicate that these three counties are currently underserved. The growth in the population aged 50-74 demonstrates that the demand for colorectal screenings will increase.

DDM reports that their physicians currently perform the following procedures at area hospitals:

<u>Hospital</u>	<u>Annual Gastroenterology Procedures</u>
Faxton-St. Luke's	7,000
St. Elizabeth's	9,000
Oneida Community Hospital	5,000
Total	21,000

DDM states that there is insufficient outpatient surgical capacity in the area to accommodate the increased surgical volume that would be generated by the additional physicians that DDM intends to recruit. The applicant states that Faxton-St. Luke's and St. Elizabeth Hospitals cannot accommodate additional DDM physicians without expanding their facilities. Although both hospitals have offered to build additional procedure rooms, DDM reports that the proposed ambulatory surgery center is essential to the recruitment of new gastroenterologists.

The four OR's in the proposed facility could not accommodate more than the projected number of new procedures (up to 6,000) to be generated by the new gastroenterologists. DDM will therefore maintain its current volume of procedures at area hospitals

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Services

This freestanding single specialty ambulatory surgery center proposes to provide surgical services in the areas of gastroenterology, utilizing four operating rooms. The Center will be in operation 7:00 a.m. to 3:30 p.m. Monday through Friday. The Center intends to extend its hours as necessary to accommodate patient needs.

The list of procedures provided reflects the proposed services are consistent with the specialties of the physicians that have expressed interest in practicing at this Center. The Center intends to review this list annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

Staffing

Staffing will consist of 19.7 FTEs including registered nurses and technicians, under the supervision of the Center's medical director, Garth Garramone. Staffing is expected to increase to 21.7 FTEs by the third year of operation. Anesthesia services will be provided by board-certified or board-eligible anesthesiologists.

Back-up Support Services and Off-hour Coverage

Emergency, in-patient and back-up support services will be provided by Faxton-St. Luke's Healthcare which is 1.5 miles and five minutes in travel time from the Center. Negotiations have been initiated. An answering service, with access to the surgeon who performed the surgery or his/her on call physician, will be provided to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform with generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements. In addition, the applicant indicates the Center intends to receive accreditation from either the Accreditation Association of Ambulatory Health Care or Joint Commission on Accreditation of Healthcare Organizations within two years after opening.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Managing Member's Responsiveness to Community Need

The Managing Members, each with 14.2857% ownership, are as follows:

Richard Cherpak, M.D.
Brett Gandhi, M.D.
Garth Garramone, DO
Norman Neslin, M.D.
Robert Pavelock, M.D.
Bradley Sklar, M.D.
Stanley Weiselberg, M.D.

Characteristics of the governing body reflect responsiveness to community need in the use of a patient satisfaction measurement tool that will provide continuous, ongoing feedback to the organization for the total quality management improvement program and planning discussions. Input from members of the medical staff and patients will provide the

basis for additional services and freed or reduced fee care to eligible patients.

Character and Competence

Staff from the Division of Certification and Surveillance reviewed the disclosure information submitted by the individuals 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 and relatives' ownership interest in other health care facilities. This review revealed the following:

<i>Name</i>	<i>Work History/Affiliated Facility</i>
Richard Cherpak, M.D.	Physician in private practice since 1993.
Brett Gandhi, M.D.	Physician in private practice since 1994.
Garth Garramone, D.O.	Physician in private practice since 2004.
Norman Neslin, M.D.	Physician in private practice since 1987.
Robert Pavelock, M.D.	Physician in private practice since 1987.
Bradley Sklar, M.D.	Physician in private practice since 1993.
Stanley Weiselberg, M.D.	Physician in private practice since 1984.

Based on this information, staff from the Division of Certification and Surveillance concluded that those proposed managers of the company are persons of good moral character whose training and experience demonstrate competency to operate an ambulatory surgery center. The members are of such character, experience, competence and standing as to give reasonable assurance of their ability to conduct the affairs of the center so as to provide proper care for the patients to be served at the proposed facility.

Associated Facility Histories

None of the applicants disclosed ownership/operator association with a medical care facility, other than the private practice of medicine, either personally or by any member of their immediate family.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease for the proposed site, the terms are summarized below:

- Premises:* 11,436 square feet located at 116 Business Park Drive, Utica, New York
Landlord: 116 Business Park Associates, LLC
Lessee: Mohawk Valley EC, LLC
Term: 10 years at \$480,312 per year (\$42.01 per sq. ft)
Renewal is for two 5-year terms at \$528,343 for the 1st 5-year term and \$554,760 for the 2nd 5-year term
Provisions: Responsible for utilities, maintenance and increases in real estate taxes and operating costs.

The seven members of the proposed FASC, Mohawk Valley EC, have identical ownerships in the landlord, 116 Business Park Associates, LLC so this is a non-arm's length lease. The applicant has provided realtor letters attesting to the rental rate as being of fair market value. Additionally, they stated \$29 of the \$42 per square foot charge goes to amortizing the landlord's loan to build-out the FASC and its applicable share of the building's purchase price.

Total Project Cost and Financing

Total project costs for the acquisition of moveable equipment are estimated at \$1,640,957, broken down as follows:

Planning Consultant Fees	\$40,000
Movable Equipment	1,589,992
CON Application Fee	2,000
CON Processing Fee	<u>8,965</u>
Total Project Cost	\$1,640,957

Project costs are based on a September 1, 2010, start date with a three month construction period.

The applicant's financing plan appears as follows:

Equity Contribution	\$164,096
Bank Loan (6,75%, 7-year term)	<u>1,476,861</u>
Total	\$1,640,957

A letter of interest has been provided by Manufacturers and Traders Trust Company (M & T Bank).

Operating Budget

The applicant has submitted an operating budget, in 2010 dollars for the first and third years of operation, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,399,185	\$4,111,622
Expenses:		
Operating	\$1,878,010	\$2,247,109
Capital	<u>817,665</u>	<u>791,322</u>
Total Expenses	\$2,695,675	\$3,038,431
Net Income (Loss)	\$703,510	\$1,073,191
Utilization: (procedures)	6,000	7,259
Cost Per Procedure	\$449.28	\$418.57

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

Medicaid Fee-For-Service	0.5%
Medicaid Managed Care	1.5%
Medicare Fee-For-Service	25.0%
Commercial Fee-For-Service	2.0%
Commercial Manage Care	68.9%
Private Pay	0.1%
Charity	2.0%

Utilization and expense assumptions are based on comparable diagnostic and treatment centers in New York State, as well as the physicians' experience in operating a private practice. The applicant has submitted physician referral letters in support of utilization projections. A sensitivity analysis was performed and illustrates all costs were covered in the first year at 70.6% of budgeted procedures or 4,235 procedures and by the third year the breakeven point drops to 64.9% of the budgeted procedures.

Capability and Feasibility

The total project cost of \$1,640,957 will be funded as follows; \$164,096 from Mohawk Valley EC proposed members and \$1,476,861 from a bank loan at stated terms. A letter of interest has been provided for financing from M&T bank.

Working capital requirements are estimated at \$506,406, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest to finance \$253,203 at an interest rate of approximately 6.75% for a three-to- five-year term. The balance of \$253,203 is being contributed by the proposed members of Mohawk Valley EC. Presented as BFA Attachment A is Mohawk Valley EC members' personal net worth statements that indicate sufficient liquid resources for the equity requirements. Presented as BFA Attachment B, is Mohawk Valley EC pro forma balance sheet that shows operations will start off with \$417,299 in equity.

Mohawk Valley EC projects operating excesses of \$703,510 and \$1,073,191 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies while commercial payers are based on experience.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The applicant is proposing to build a new ambulatory surgery center (ASC) on the second floor of an existing office building. One smoke compartment will have the clinical spaces such as the four procedure rooms, prep/recovery bays, nourishment, nurse station, staff lounge and support areas. The other smoke compartment will have the non-clinical spaces such as the reception and waiting areas, offices, locker rooms, exam room, conference room and staff lounge.

Environmental Review

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

- | | |
|------------------|---|
| BFA Attachment A | Personal Net Worth Statement of Proposed Members of Mohawk Valley EC, LLC |
| BFA Attachment B | Pro Forma Balance Sheet of Mohawk Valley EC, LLC |
| BFA Attachment C | Establishment Checklist for Ambulatory Care Sites |
| BHFP Attachment | Map |

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Faxton St. Luke's Healthcare
1676 Sunset Avenue
Utica, NY 13502

Current OR Use ¹	Surgery Cases ²		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
45%	Ambulatory 10,084	Inpatient 1,033	6,845	Yes

Faxton St. Luke's Healthcare (FSLH) opposes the application, contending that if all of the outpatient cases currently performed by the applicant physicians at FSLH were to be transferred to the proposed facility, FSLH would experience a net revenue loss of \$5.8 million. This figure is derived from the cash receipts of \$7.3 million for the procedures performed by the applicant physicians last year, less associated direct costs of \$1.5 million. FSLH estimates that this loss would have an adverse impact on the following services that it operates at a loss and which are subsidized in part by revenues from its endoscopy cases:

- Maternal/Child Health Services, including FSLH's Level II neonatal unit;
- Inpatient psychiatric services (26-bed unit);
- FSLH's Urgent Care Center at the Faxton campus;
- Various community-related wellness and screening activities, for diabetes, tobacco cessation, colorectal screening, oncology clinical trials, and others; and
- Services at FSLH's eight primary care extension clinics.

In 2007, FSLH had a working capital ratio of 2.77 based on current assets of \$82.3 million and current liabilities of \$29.7 million. FSLH's ratio for 2008 was 2.40, based on current assets of \$77.5 million and current liabilities of \$32.3 million. In 2007, FSLH experienced an operating gain of \$7.8 million on revenues of \$237.4 million and expenses of \$229.6 million. In 2008, FSLH had an operating gain of \$4.2 million on revenues of \$257.1 million and expenses of \$252.9 million.

In 2008, FSLH experienced \$10.6 million in bad debt and provided \$1.7 million in charity care. In 2009, the figures were \$9.0 million in bad debt and \$1.4 million in charity care.

Facility: Oneida Healthcare Center
321 Genesee Street
Oneida, NY 13421

¹ Endoscopy rooms only.

² Endoscopy procedures only.

Oneida Healthcare Center responded with a letter stating that the facility would not oppose the Mohawk Valley E. C. L.L.C. application. This was based on a meeting with the applicants in which they assured the facility that the proposed ASC would not affect current volume at the Oneida Healthcare Center and that the recruitment of additional physicians associated with the new ASC should in the near future allow these and the current applicant physicians to perform additional procedures at the Oneida Healthcare Center hospital.

Facility: St. Elizabeth Medical Center
2209 Genesee Street
Utica, NY 13501

No response.

Supplemental Information from Applicant

- **Need and Sources of Cases**

The applicant cites information from the Behavioral Risk Factor Surveillance System for New York State showing that the number of people undergoing colorectal cancer screening in three of the five counties to be served by the proposed ASC is below the Upstate average; and that the primary targeted population for colorectal screening (ages 50-74) is projected to increase by 7.4 percent in the five-county area over the next ten years.

The applicant also states that with its present caseload, there is a 10 to 14-week wait for endoscopy procedures, with approximately 500 patients waiting each week, and an estimated current backlog of 5,000 to 7,000 procedures. The recruitment of additional physicians that will be made possible by the establishment of the new ASC will allow the provision of 2,000 to 3,000 additional procedures per added physician. This will help address the current backlog, as well as increase the volume of colorectal screenings in the area, including in the three underserved counties.

- **Office-Based Procedures**

The applicant states that none of the procedures currently performed by the applicant physicians are carried out in an office setting.

- **Staff Recruitment and Retention**

The applicant states that employees will be recruited from accredited schools and training programs, as well as through advertisements in local newspapers and professional publications. The proposed facility may also hire some nursing staff from the current practice of the applicant physicians. Competitive wages, above-average benefits, incentives for good performance and a spacious, state-of-the-art facility are expected to add to the proposed ASC's capacity to retain skilled staff.

OHSM Comment

The comments from the objecting hospital, FSLH, presuppose that the facility would lose to the proposed ASC all, or a large portion of, its current endoscopy cases performed by the applicant physicians. However, this is at odds with the applicant's stated intention that the ASC will be established to accommodate an expansion of the applicant physicians' current practice, adding 6,000 to 7,000 procedures per year. The four OR's in the proposed ASC could accommodate no more than this volume. This would of necessity mean that the nearly 20,000 procedures currently performed by the seven applicant physicians would remain at Faxton St. Luke's Healthcare and at the other hospitals in the area where they are currently performed. In view of this circumstance, the Department finds that the information submitted by FSLH in opposition to this application does not provide a sufficient basis for reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

Mohawk Valley Endoscopy Center

Pro-Forma Balance Sheet

	<u>Beginning of Year One January 2011</u>
ASSETS	
CURRENT ASSETS	
Cash Balances	\$ 506,406
Accounts Receivable - Net	\$ -
TOTAL CURRENT ASSETS	\$ 506,406
OTHER ASSETS	
New program Assets (application/consulting)	\$ 50,965
Equipment (net of depreciation)	\$ 1,589,992
TOTAL OTHER ASSETS	\$ 1,640,957
TOTAL ASSETS	\$ 2,147,363
LIABILITIES AND NET ASSETS	
CURRENT LIABILITIES	
	\$ -
TOTAL CURRENT LIABILITIES	\$ -
LONG-TERM LIABILITIES	
Bank Loan for Working Capital	\$ 253,203
Bank Loan for Equipment	\$ 1,476,861
TOTAL LONG-TERM LIABILITIES	\$ 1,730,064
TOTAL LIABILITIES	\$ 1,730,064
LLC CAPITAL	\$ 417,299
TOTAL LIABILITIES AND LLC CAPITAL	\$ 2,147,363

ESTABLISHMENT CHECKLIST FOR AMBULATORY CARE SITE

APPLICATION: CON 092142-B Mohawk Valley EC, LLC

NATURE OF APPLICATION: XX PRIMARY CARE
SPECIALTY
Endoscopy & Colonoscopy

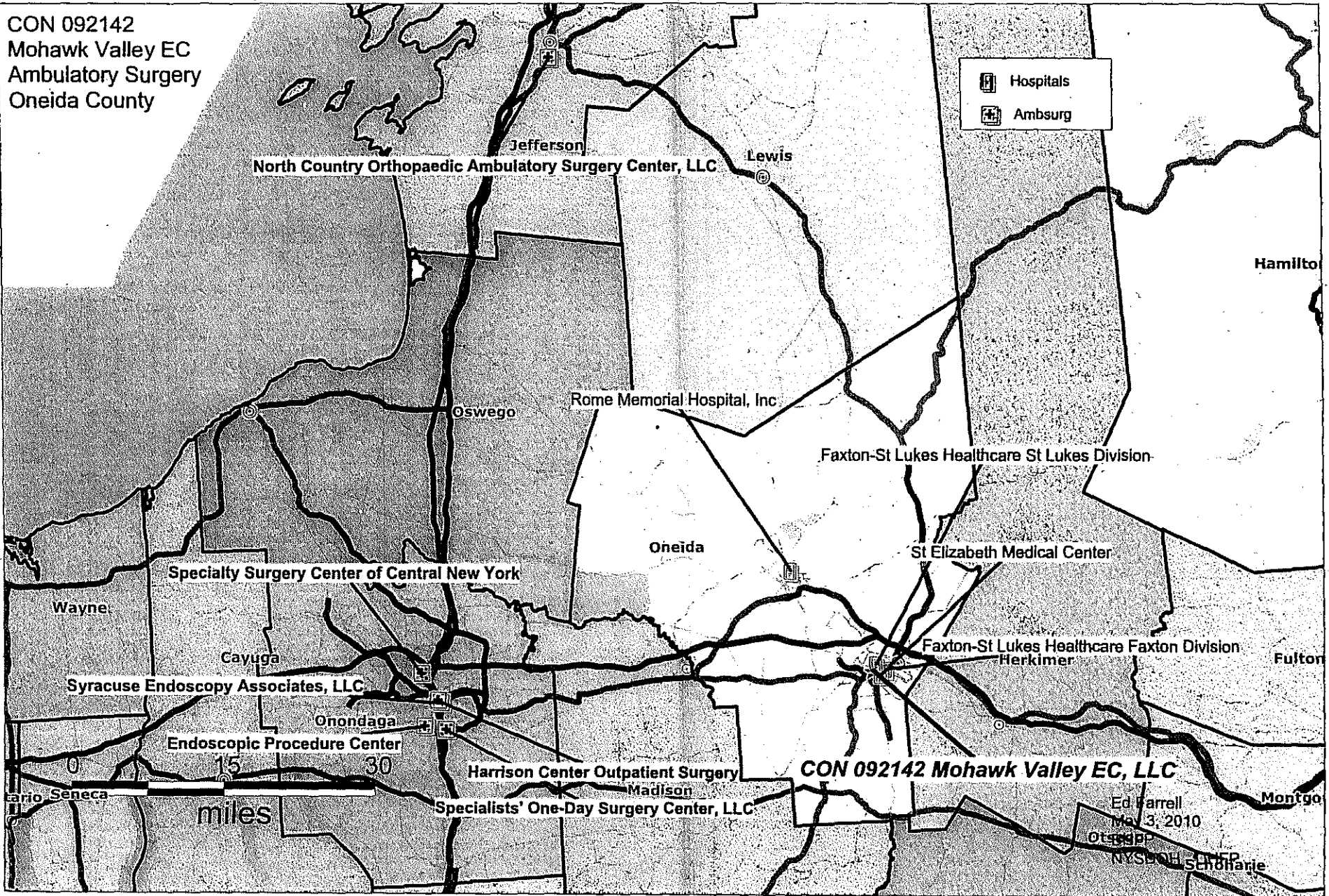
AUSPICE: XX NON PROFIT
PROPRIETARY
PUBLIC
- Limited Liability Company

AFFILIATIONS: None

UNIT COST:	<u>YEAR ONE</u>	<u>YEAR THREE</u>
OPERATING	\$ 313.00	\$ 309.56
CAPITAL	\$ <u>136.28</u>	\$ <u>109.01</u>
TOTAL	\$ 449.28	\$ 418.57

PAYOR SOURCE:	<u>YEAR ONE</u>
MEDICAID-FFS	.5%
MEDICAID-MC	1.5%
MEDICARE-FFS	25.0%
COMMERCIAL-FFS	2.0%
COMMERCIAL-MC	68.9%
PRIVATE PAY	.1%
CHARITY	2.0%

CON 092142
Mohawk Valley EC
Ambulatory Surgery
Oneida County



Hospitals
Amburg

North Country Orthopaedic Ambulatory Surgery Center, LLC

Rome Memorial Hospital, Inc

Faxton-St Lukes Healthcare St Lukes Division

Specialty Surgery Center of Central New York

St Elizabeth Medical Center

Syracuse Endoscopy Associates, LLC

Faxton-St Lukes Healthcare Faxton Division
Herkimer

Endoscopic Procedure Center

Harrison Center Outpatient Surgery

CON 092142 Mohawk Valley EC, LLC

Specialists' One-Day Surgery Center, LLC

Ed Farrell
May 3, 2010
NYSDOH
Seneca





Healthcare Association
of New York State

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Project Management

Charlie

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and Continuing Care Providers

Daniel Sisto, President

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August 20, 2010

Richard F. Daines, M.D.
Commissioner of Health
New York State Department of Health
Empire State Plaza
Corning Tower Building, 14th Floor
Albany, NY 12237-0001

Dear Dr. Daines:

On behalf of the Healthcare Association of New York State (HANYS), I write in opposition to the proposed Mohawk Valley Endoscopy Center, L.L.C. (CON#092142), which is expected to be on the agenda for the August 31 meeting of the Public Health Council's Establishment Committee.

HANYS represents 550 not-for-profit and public hospitals, health systems, nursing homes, and home care providers across the state, and is committed to the provision of quality health care in the most appropriate setting. HANYS also believes the health care community, government regulators, and policymakers have a shared responsibility to preserve access to health care for all New Yorkers, especially in these difficult times when patients are increasingly turning to safety net providers for care across the continuum.

For many years, HANYS has supported New York's efforts to "rightsize" the state's health care system and, for this reason, we oppose competitive projects that seek to create duplicative or excess capacity and then compete only for privately insured patients, leaving the uninsured and those receiving Medicaid to continue receiving services at the hospital. The state itself has invested millions of dollars through Health Care Efficiency and Affordability Law for New Yorkers (HEAL NY) grants to effect recommendations of the Berger Commission and other voluntary rightsizing efforts to reduce duplication.

Despite laudable efforts at the state level to increase payments for traditionally underpaid hospital services such as emergency department care, hospitals continue to cross-subsidize their safety net services with the more generous payments received for other services, such as ambulatory surgery procedures. Allowing these services to leave the hospital when there is adequate capacity to accommodate additional procedures further fragments the health care

TO PMU.
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RECEIVED

AUG 24 2010

BUREAU OF FINANCIAL ANALYSIS
AND REVIEW

73407



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

August 24, 2010

Ann Gormley
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

RE: 092142-B
Mohawk Valley EC, LLC
(Oneida County)
Establish and construct a single specialty
ambulatory surgery center providing endoscopy
services, at 116 Business Prk Drive, Utica

Dear Ms. Gormley:

The above referenced project is scheduled for review by the Establishment Committee of the Public Health Council on August 31, 2010. The meeting is open to the public and will be held at 10:00 a.m. at the New York State Department of Health offices in New York City located at 90 Church Street, 4th Floor, Meeting Rooms #4E03/4E04. Anyone wishing to attend the Establishment Committee meeting MUST e-mail lat02@health.state.ny.us by noon on Monday, August 30, 2010 so your name can be placed on a security list.

Subsequently, the recommendation of the Committee will be forwarded to the full Public Health Council for final decision. The Public Health Council will meet at 10:00 a.m. on September 24, 2010, at the New York State Department of Health offices in New York City located at 90 Church Street, 4th Floor, Meeting Rooms #4E03/4E04. It is anticipated that the project will be reviewed by the Public Health Council at that time. The Public Health Council meeting is also open to the public, but public comment and participation is not allowed. Anyone wishing to attend this meeting should phone (518) 474-8009 to be placed on the security list.

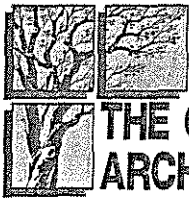
Should you have any questions regarding this meeting, please feel free to contact me at (518) 402-0964.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julia G. Richards', written over a horizontal line.

Julia G. Richards
Executive Secretary
State Hospital Review and Planning Council

Enclosure

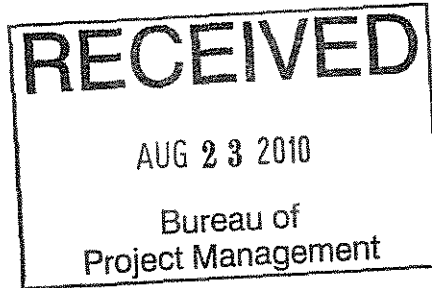


**THE CRISSEY
ARCHITECTURAL
GROUP**

January 20, 2010

Syracuse Community Health Center
819 South Salina Street
Syracuse, NY 13202

RE: Dr. Rurka's Office
1200 East Genesee Street
Syracuse, NY



092165

To Whom it May Concern:

This letter is to confirm that the existing office as modified meets Title 10 NYCRR including referenced guidelines under section 711.7, except that there is no fire alarm system nor is the building sprinklered and the handicap restrooms are down the hall less than 50 feet from Dr. Rurka's office entry. The Syracuse Community Health Center has indicated that they are willing to install a local fire alarm system that would be supervised by the alarm company installing it. It is not a new facility so Part 715.1 is not applicable.

Sincerely,

Peter D. Crissey, AIA

cc: File
Encl.

73393



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

July 15, 2010

Ann Gormley
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

RE: 092142-B
Mohawk Valley EC, LLC
(Oneida County)
Establish and construct a single specialty federally
qualified ambulatory surgery center providing
endoscopy services, at 116 Business Park Drive, Utica

Dear Ms. Gormley:

Please be advised that the above captioned application has been scheduled for review by the Project Review Committee of the State Hospital Review and Planning Council on Thursday, July 22, 2010, approximately 10:30 a.m. in Meeting Room #1, Concourse Level, Empire State Plaza, Albany, New York. A copy of the exhibit, to be reviewed at the meeting, is enclosed.

Subsequently, the application will be considered by the State Hospital Review and Planning Council on Thursday, August 5, 2010, at 10:00 a.m. to approximately 12:00 p.m., located in Meeting Rooms #2-4, Concourse Level, Empire State Plaza, Albany, New York. Both meetings are open to the public.

The above stated meetings can be accessed via webcast through the following internet address: www.health.state.ny.us/events/webcasts

Sincerely,

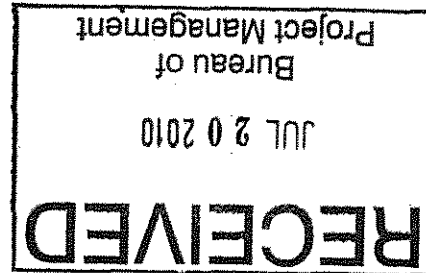
Julia G. Richards
Executive Secretary
State Hospital Review and Planning Council

Enclosures



July 19, 2010

Jeffrey R. Rothman, Director
Bureau of Project Management
New York State Department of Health
433 River Street, Hedley Bldg., 6th Floor
Troy, New York 12180



RE: Mohawk Valley EC, LLC
~~CON #092142~~ Establish and construct
a single-specialty freestanding
ambulatory surgery center (FASC)
County: Oneida

Dear Mr. Rothman:

Attached is a copy of correspondence submitted to the Department by Faxton-St. Luke's Healthcare raising objections to the Mohawk Valley EC application to establish an endoscopy services FASC in Utica.

It is CNYHSA practice to pass on comments received from interested parties on CON applications to the Department of Health. Therefore, we ask that the concerns expressed by Faxton-St. Luke's Healthcare be addressed by the SHRPC Project Review Committee in its consideration of the application scheduled for this Thursday's Committee meeting. Thank you.

Sincerely,

Timothy J. Bobo
Executive Director

c. Ann Gormley
Don Peal
Scott Perra

73007

March 26, 2010

Certified Mail

Mr. Jeff Rothman
New York State Department of Health
Bureau of Project Management
433 River Street, 6th Floor
Troy, New York 12180-2299

RE: Certificate of Need Application - CON #092142
Mohawk Valley E.C., L.L.C. (MVEC)
(Digestive Disease Management of Central New York, LLP)

Dear Mr. Rothman,

Thank you for the Department's February 5, 2010 correspondence regarding the referenced Certificate of Need application and for granting a 30 day extension for a response.

Our understanding is that the proposed DDM ASC will be a single specialty facility, restricted to gastroenterology/endoscopy procedures. Thus, although your correspondence and questions relate to all operating room capacity or utilization, for purposes of this letter Faxton-St. Luke's Healthcare (FSLH) responses only relate to our separate gastroenterology/endoscopy procedure rooms.

Impact of the Proposed ASC on FSLH's community-oriented services.

1. FSLH will lose much needed revenue should this free standing ambulatory surgery unit be approved. FSLH is a disproportionate share hospital due to our high Medicaid/SSI utilization. The following is an explanation of the potential revenue impacts that this ASC will have should all of the outpatient endoscopy related procedures currently performed be relocated to the newly proposed ASC.

Outpatient Cases Performed by Group	6,845
Revenue Loss from GI Cases Performed by Group in 2009 Based on 12 Months of Actual Revenue (Cash Receipts)	\$ 7,321,421
Direct Cost of Above Cases Based on 12 Months of Actual Direct Costs	<u>\$ 1,562,923</u>
Net Revenue Loss From GI Cases Performed by Group	\$ 5,758,498

St. Luke's Campus
1656 Champlin Avenue
Utica, NY 13502
315.624.6000

Faxton Campus
1676 Sunset Avenue
Utica, NY 13502
315.624.5200

Corporate Address
PO Box 479
Utica, NY 13503-0479
315.624.6000

www.faxtonstlukes.com

2. As indicated above, we project up to a \$5.7 million net operating loss as a result of this proposed ASC. Should that or a significant portion of that loss take place, the following needed safety net services that are provided by FSLH would be in jeopardy:
 - a. We are the sole community provider of Maternal/Child Health Services including the Level II Nursery in the Utica, New York market. Currently upwards of 55% of our approximately 2,200 annual deliveries are Medicaid and self pay. Based on Medicare approved step down methodologies, we lose \$1.5 million dollars on maternal/newborn services annually. A service such as this is supported by endoscopy revenues, one of the few remaining profitable services provided at the hospital.
 - b. Since 1992, we have been operating a 26-bed inpatient psychiatric facility, one of two in our community. Our Medicaid/self pay charges for this service are approximately 45% and based on Medicare approved step-down methodologies, this service loses \$2 million dollars on an annual basis.
 - c. At our Faxon Campus, we operate an Urgent Care Center that has annual visits of 18,000-19,000 patients. This safety net service had a loss of \$1.4 million in 2009, and a Medicaid/self pay payer mix of 51%.
 - d. During 2009, we have documented costs of \$1 million for various community related wellness and screening activities such as Community Diabetes Program, Lymphadema Therapy, Wellness Center, Oncology Clinical Trials, Tobacco Cessation Program, Colorectal Screening, Breast Care Center, Palliative Care, and Integrative Medicine which FSLH provides as community services.
 - e. FSLH provides primary care services in rural areas, i.e. Boonville, Barneveld, and Waterville. Our North Utica office sees a very high percentage of refugees. Combined our eight primary care sites lost approximately \$3.8 million in 2009. In 2009, 16% of our visits were Medicaid/self pay. These facilities in many cases are the sole community provider of primary care services in those markets and our ability to support them given their negative operating margins would be in jeopardy.

Total utilization of operating (endoscopy) capacity at FSLH (by percentage) during regular hours and off hours.

FSLH currently operates nine (9) endoscopy procedure rooms, three (3) acute care based at the St. Luke's Campus and six (6) at our Faxon Outpatient Multi-specialty Ambulatory Surgery Center. If we assume a conservative utilization schedule for each procedure room, we could perform ten (10) procedures per 8-hour day (48 minutes per procedure). Each of our nine procedure rooms could annually perform 2,500 cases, for a total annual capacity, (again from a conservative perspective) of 22,500 cases. In 2009, our total endoscopies performed were 11,117 which is approximately a 45% utilization of those rooms. The number of procedures done during off hours or on weekends is approximately 1,000 per year and are currently only performed on an emergency basis.

A breakdown of the OR (endoscopy) utilization by total inpatient and total ambulatory cases.

During 2009, FSLH performed 1,033 procedures on inpatients and 10,084 outpatients for a total of 11,117 annually.

Names of the surgeons (endoscopists) who currently perform endoscopy at FSLH and the number of ambulatory surgery cases (endoscopy procedures) for each in the most recent calendar year.

Stanley Weiselberg, MD	817
Norman Neslin, MD	803
Robert Pavelock, MD	841
Bradley Sklar, MD	1,072
Richard Cherpak, MD	1,223
Brett Ghandi, MD	1,004
Garth Garramone, DO	1,085
Total	6,845

Whether FSLH reserve OR (endoscopy) time on a regular basis ("block time") for any of the surgeons (endoscopists) in question. If so, please include an OR (endoscopy schedule) weekly or monthly delineating the number of ORs (endoscopy procedure rooms) and the times reserved for these practitioners.

See Attachment 1 – Faxton-St. Luke's Healthcare – Endoscopy Block Booking Schedule

FSLH does utilize block time by physician, but also utilizes the open room concept to make sure that emergencies and add-on's can efficiently be accommodated.

Audited financial statement for the last two years available.

See Attachment 2 - Faxton-St. Luke's Healthcare and Subsidiaries Consolidated Financial Statements, December 31, 2008 and 2007

Expenditures for Bad Debt and Charity Care in your two most recent fiscal years.

	<u>2009</u>	<u>2008</u>
Bad Debt	\$9,012,773	\$10,581,193
Charity Care	<u>\$1,399,004</u>	<u>\$ 1,724,000</u>
Total	\$10,411,777	\$12,305,193

Additional Information: Analysis of access to outpatient/ASC based endoscopy services in the greater Utica area.

Utilizing 2008 outpatient/ASC data obtained from HANYS/SPARCS, FSLH analyzed the Utica area's access to outpatient endoscopy services and associated per capita utilization in comparison to other UpState New York Metropolitan Areas. This analysis revealed the following:

a. The Utica-Rome area utilization rate per 1,000 population was 54, the highest of the six areas analyzed. The next highest utilization rates per 1,000 population were Binghamton, Buffalo and Albany at 35, 31, 31 respectively. Based upon this data, there does not appear to be an access to services issue in the Utica area.

b. The predicted outpatient endoscopies for each Metropolitan area were analyzed using HANYS' proprietary Outpatient Forecaster 2.10. This predicted approach reaches the same conclusion as above: more Endoscopies are performed in Utica per capita in an outpatient setting than any other UpState metro area (15,881 actual Utica area Endoscopies in ASUs in 2008 vs 10,187 outpatient total predicted). The Utica area's predicted utilization rate per 1,000 population of 34.33 compares to the six area average of 33.60. The Utica area's actual utilization rate per 1,000 population of 54 represents an increment of 56% over the predicted rate.

c. In analyzing 2008 outpatient data for 10 upstate NY counties, inclusive of the five counties indicated by DDM as being their service area (Oneida, Herkimer, Madison, Lewis & Chenango), the DDM five county area reported 41.74 procedures/1,000 population vs 30.52 for the five comparison counties (Broome, Erie, Albany, Monroe & Onondaga). Removing Onondaga County from the five comparison counties, due to its apparent low reporting, would result in a use rate of 33.64, still notably lower than the DDM five county area's 41.74. Access issues or unmet need are not evident in the DDM defined five county area.

d. In the DDM defined service area, DDM in 2008 reported less than a 50% market share in the five county area at 46.21%. It had market shares of .96% in Chenango and 17.01% in Lewis. Even assuming there were an unmet need in those counties, there is no reason to believe that DDM would receive 100% of any calculated unmet need. Other physician practices could also be recruiting/targeting these areas (Syracuse serves Madison, Binghamton serves Chenango, Rome serves Oneida and Lewis, the Slocum-Dickson practice in Utica, etc.) and the data indicates that there is unused capacity in all of those areas. Further, DDM's own analysis indicates that DDM historically has not targeted patient populations with access issues. The Self Pay, Medicaid and Medicaid HMO payor mix for the 5 County area in total was 10.35% in 2008. The DDM payor mix for this population was 3.18%.

Please see Attachment 3 for detailed information in support of this summary analysis.

FSLH provides the following summary points in regard to our response to the Department's information request:

- FSLH has enjoyed a good working relationship with the DDM physicians and respects the service that they provide to the community;
- FSLH has offered to have DDM participate with the hospital in a process that would enhance their and the hospital's efficiencies and productivity in providing outpatient endoscopy services;
- FSLH has offered DDM assistance in their recruitment of additional physicians;
- DDM provides a substantial amount of the outpatient Endoscopy volume at FSLH (68% of total procedures);
- FSLH projects up to a \$5.7 million net operating loss as a result of the proposed DDM ASC. Should that take place, a number of needed safety net services that are provided by FSLH would be in jeopardy;

- In 2009, FSLH total endoscopies performed were 11,117 which is approximately a 45% utilization of those rooms;
- In the past two years, FSLH has provided approximately \$23M of Charity Care and incurred Bad Debts;
- Analysis of available data concludes that there does not appear to be an access issue for outpatient endoscopy services in the Utica area or the defined DDM five county area.

If you have any questions, please feel free to contact me at sperra@mvnhealth.com or 315.624.6002.

Sincerely,



Scott H. Perra, FACHE
President/CEO

cc: Mohawk Valley E.C., L.L.C.
c/o Ms. Ann M. Gormley
Empire Health Advisors
60 Railroad Place, Suite 101
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Tom Jung
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To: N. Nelson
S. Berry
C. Abel
T. Jung
D. Geleta
M. Hart
D. Little
C. Schermerhorn
C. Champagne

092142 Architectural Analysis

Mohawk Valley EC, LLC

DATE: July 8, 2010 (Rev. 7/13/10)

GREENSHEET SUMMARY:

This project involves the construction of an 11,436 SF freestanding single-specialty ambulatory surgery center to perform endoscopies. The facility will be constructed in space located on the second floor of an existing office building.

REVIEW SUMMARY:

The applicant is proposing to build a new ambulatory surgery center (ASC) on the second floor of an existing office building. One smoke compartment will have the clinical spaces such as the four procedure rooms, prep/recovery bays, nourishment, nurse station, staff lounge and support areas. The other smoke compartment will have the non-clinical spaces such as the reception and waiting areas, offices, locker rooms, exam room, conference room and staff lounge.

ENVIRONMENTAL REVIEW:

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

ANALYSIS:

Conditions of Approval

The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01 (AER).

The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction (AER).

The applicant shall complete construction by February 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before the completion date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner.

RECOMMENDATION:

From an architectural perspective, approval is recommended.

092142 Financial Analysis

Mohawk Valley EC, LLC

092142-B Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center
(Oneida County)

FINDINGS: CONTINGENT APPROVAL

The applicant has demonstrated the capability to proceed in a financially feasible manner, contingent upon:

Submission of a bank loan commitment for the applicant's financing acceptable to the Department of Health. (BFA)

Submission of a working capital loan commitment acceptable to the Department of Health. (BFA)

Submission of an executed lease agreement acceptable to the Department of Health. (BFA)

DESCRIPTION

Mohawk Valley EC, LLC d/b/a Mohawk Valley Endoscopy Center (Mohawk Valley EC), a limited liability company recently formed to specifically pursue this CON application, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC). Mohawk Valley EC will be certified as a single-specialty freestanding ambulatory surgery center (FASC) in the discipline of gastroenterology, providing endoscopy and colonoscopy services. The proposed FASC will lease 11,436 square feet of space in a to-be-renovated multi-purpose building located at 116 Business Park Drive, Utica. The FASC will be located on the second floor and consist of four procedure rooms, one exam room, pre and post-procedure bays, along with space for support functions.

In 2008 the seven proposed members of the new Article 28 FASC performed 19,173 outpatient endoscopy procedures, at four area medical facilities: St. Elizabeth Medical Center; Faxton-St.Luke's Healthcare-Faxton Division; Faxton-St. Lukes Healthcare-St. Lukes Division and Oneida Healthcare Center. All seven gastroenterologists are partners in Digestive Disease Medicine of Central New York, LLP (DDM). They will continue to perform outpatient endoscopies at the four medical facilities, but will add Mohawk Valley EC into their current rotation. Mohawk Valley EC believes that the proposed FASC will complement the facilities they currently practice at, reduce the wait time for an endoscopy procedure, help them recruit one or two additional gastroenterologists, and meet the needs of the area's aging population.

The proposed members of Mohawk Valley EC, LLC and their ownership percentages are as follows:

<u>Proposed Owner</u>	<u>Ownership Percentage</u>
Stanley P. Weiselberg, M.D.	14.2857%
Norman R. Neslin, M.D.	14.2857%
Robert R. Pavelock, M.D.	14.2857%
Bradley F. Sklar, M.D.	14.2857%
Richard Cherpak, M.D.	14.2857%
Brett Gandhi, M.D.	14.2857%
Garth J. Garramone, D.O.	14.2858%

FINANCIAL SUMMARY

Total project cost of \$1,640,957 consists of moveable equipment and will be met with \$164,096 in cash and a \$1,476,861 seven year loan at 6.75% from M&T Bank.

Budget:	Revenues:	\$4,111,622
	Expenses:	<u>\$3,038,431</u>
	Gain:	\$1,073,191

Subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner

LEASE RENTAL AGREEMENT

The applicant has submitted a draft lease for the proposed site, the terms are summarized below:

Premises:	11,436 square feet located at 116 Business Park Drive, Utica, New York
Landlord:	116 Business Park Associates, LLC
Lessee:	Mohawk Valley EC, LLC
Term:	10 years at \$480,312 per year (\$42.01 per sq. ft) Renewal is for two 5-year terms at \$528,343 for the 1 st 5-year term and \$554,760 for the 2 nd 5-year term
Provisions:	Responsible for utilities, maintenance and increases in real estate taxes and operating costs.

The seven members of the proposed FASC, Mohawk Valley EC, have identical ownerships in the landlord, 116 Business Park Associates, LLC so this is a non-arm's length lease. The applicant has provided realtor letters attesting to the rental rate as being of fair market value. Additionally, they stated \$29 of the \$42 per square foot charge goes to amortizing the landlord's loan to build-out the FASC and its applicable share of the building's purchase price.

TOTAL PROJECT COST AND FINANCING

Total project costs for the acquisition of moveable equipment are estimated at \$1,640,957, broken down as follows:

Planning Consultant Fees	\$40,000
Movable Equipment	1,589,992
CON Application Fee	2,000
CON Processing Fee	<u>8,965</u>
Total Project Cost	\$1,640,957

Project costs are based on a September 1, 2010 start date with a three month construction period.

The applicant's financing plan appears as follows:

Equity Contribution	\$164,096
Bank Loan (6,75%, 7-year term)	<u>1,476,861</u>
Total	\$1,640,957

A letter of interest has been provided by Manufactures and Traders Trust Company (M & T Bank).

OPERATING BUDGET

The applicant has submitted an operating budget, in 2010 dollars for the first and third years of operation, as summarized below:

	<u>YEAR ONE</u>	<u>YEAR THREE</u>
Revenues	\$3,399,185	\$4,111,622
Expenses:		
Operating	\$1,878,010	\$2,247,109
Capital	<u>817,665</u>	<u>791,322</u>
Total Expenses	\$2,695,675	\$3,038,431
Net Income (Loss)	\$703,510	\$1,073,191
Utilization: (procedures)	6,000	7,259
Cost Per Procedure	\$449.28	\$418.57

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

Medicaid Fee-For-Service	.5%
Medicaid Managed Care	1.5%
Medicare Fee-For-Service	25.0%
Commercial Fee-For-Service	2.0%
Commercial Manage Care	68.9%
Private Pay	.1%
Charity	2.0%

Utilization and expense assumptions are based on comparable diagnostic and treatment centers in New York State, as well as the physicians' experience in operating a private practice. The applicant has submitted physician referral letters in support of utilization projections. A sensitivity analysis was performed and illustrates all costs were covered in the first year at 70.6% of budgeted procedures or 4,235 procedures and by the third year the breakeven point drops to 64.9% of the budgeted procedures.

CAPABILITY AND FEASIBILITY

The total project cost of \$1,640,957 will be funded as follows; \$164,096 from Mohawk Valley EC proposed members and \$1,476,861 from a bank loan at stated terms. A letter of interest has been provided for financing from M&T bank.

Working capital requirements are estimated at \$506,406, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest to finance \$253,203 at an interest rate of approximately 6.75% for a three-to-five-year term. The balance of \$253,203 is being contributed by the proposed members of Mohawk Valley EC. Presented as BFA Attachment A is Mohawk Valley EC members' personal net worth statements that indicate sufficient liquid resources for the equity requirements. Presented as BFA Attachment B, is Mohawk Valley EC pro forma balance sheet that shows operations will start off with \$417,299 in equity.

Mohawk Valley EC projects an operating excess of \$703,510 and \$1,073,191 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies while commercial payers are based on experience.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and approval is recommended.

From a financial perspective, contingent approval is recommended.

SUPPORTING DATA

- BFA Attachment A Personal Net Worth Statement of Proposed Members of Mohawk Valley EC, LLC
- BFA Attachment B Pro Forma Balance Sheet of Mohawk Valley EC, LLC
- BFA Attachment C Establishment Checklist for Ambulatory Care Sites

Mohawk Valley Endoscopy Center

Pro-Forma Balance Sheet

	<u>Beginning of Year One January 2011</u>
ASSETS	
CURRENT ASSETS	
Cash Balances	\$ 506,406
Accounts Receivable - Net	\$ -
TOTAL CURRENT ASSETS	\$ 506,406
OTHER ASSETS	
New program Assets (application/consulting)	\$ 50,965
Equipment (net of depreciation)	\$ 1,589,992
TOTAL OTHER ASSETS	\$ 1,640,957
TOTAL ASSETS	\$ 2,147,363
LIABILITIES AND NET ASSETS	
CURRENT LIABILITIES	
	\$ -
TOTAL CURRENT LIABILITIES	\$ -
LONG-TERM LIABILITIES	
Bank Loan for Working Capital	\$ 253,203
Bank Loan for Equipment	\$ 1,476,861
TOTAL LONG-TERM LIABILITIES	\$ 1,730,064
TOTAL LIABILITIES	\$ 1,730,064
LLC CAPITAL	\$ 417,299
TOTAL LIABILITIES AND LLC CAPITAL	\$ 2,147,363

ESTABLISHMENT CHECKLIST FOR AMBULATORY CARE SITE

APPLICATION: CON 092142-B Mohawk Valley EC, LLC

NATURE OF APPLICATION: XX PRIMARY CARE
SPECIALTY
Endoscopy & Colonoscopy

AUSPICE: XX NON PROFIT
PROPRIETARY
PUBLIC
- Limited Liability Company

AFFILIATIONS: None

UNIT COST:	<u>YEAR ONE</u>	<u>YEAR THREE</u>
OPERATING	\$ 313.00	\$ 309.56
CAPITAL	\$ 136.28	\$ 109.01
TOTAL	\$ 449.28	\$ 418.57

PAYOR SOURCE:	<u>YEAR ONE</u>
MEDICAID-FFS	.5%
MEDICAID-MC	1.5%
MEDICARE-FFS	25.0%
COMMERCIAL-FFS	2.0%
COMMERCIAL-MC	68.9%
PRIVATE PAY	.1%
CHARITY	2.0%

092142 Programmatic Analysis

Mohawk Valley EC, LLC

Background

Mohawk Valley, EC, a limited liability company comprised of seven members, requests approval to establish a diagnostic and treatment center which will also be federally certified as an ambulatory surgical center at 116 Business Park Drive, Utica.

Program Description

Services

This freestanding single specialty ambulatory surgery center proposes to provide surgical services in the areas of gastroenterology utilizing four operating rooms. The Center will be in operation 7:00 a.m. to 3:30 p.m. Monday through Friday. The Center intends to extend its hours as necessary to accommodate patient needs.

The list of procedures provided reflects the proposed services are consistent with the specialties of the physicians that have expressed interest in practicing at this Center. The Center intends to review this list annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

Staffing

Staffing will consist of 19.7 FTEs including registered nurses and technicians, under the supervision of the Center's medical director, Garth Garramone. Staffing is expected to increase to 21.7 FTEs by the third year of operation. Anesthesia services will be provided by board-certified or board-eligible anesthesiologists.

Back-up Support Services and Off-hour Coverage

Emergency, in-patient and back-up support services will be provided by Faxton-St. Luke's Healthcare which is 1.5 miles and five minutes in travel time from the Center. Negotiations have been initiated. An answering service, with access to the surgeon who performed the surgery or his/her on call physician, will be provided to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform with generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures

will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements. In addition, the applicant indicates the Center intends to receive accreditation from either the Accreditation Association of Ambulatory Health Care or Joint Commission on Accreditation of Healthcare Organizations within two years after opening.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Managing Member's Responsiveness to Community Need

The Managing Members, each with 14.2857% ownership, are as follows:

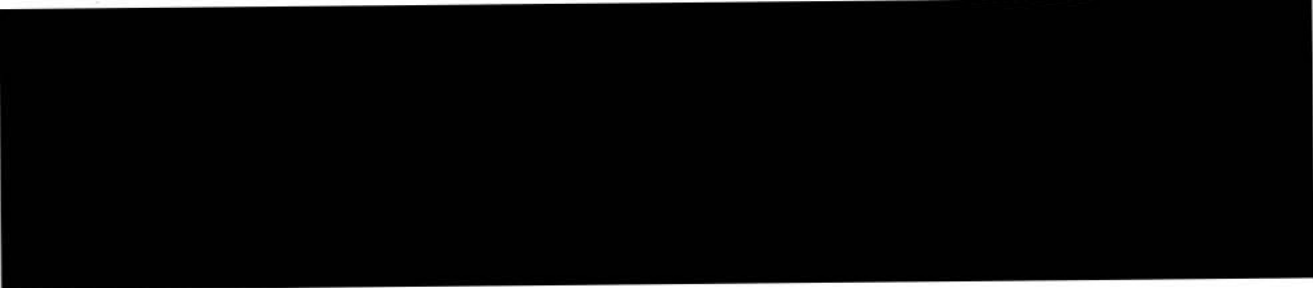
Richard Cherpak, M.D.
 Brett Gandhi, M.D.
 Garth Garramone, DO
 Norman Neslin, M.D.
 Robert Pavelock, M.D.
 Bradley Sklar, M.D.
 Stanley Weiselberg, M.D.

Characteristics of the governing body reflect responsiveness to community need in the use of a patient satisfaction measurement tool that will provide continuous, ongoing feedback to the organization for the total quality management improvement program and planning discussions. Input from members of the medical staff and patients will provide the basis for additional services and freed or reduced fee care to eligible patients.

Character and Competence

Staff from the Division of Certification and Surveillance reviewed the disclosure information submitted by the individuals 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 and relatives' ownership interest in other health care facilities. This review revealed the following:

Name	Work History/Affiliated Facility
Richard Cherpak, M.D.	Physician in private practice since 1993.
Brett Gandhi, M.D.	Physician in private practice since 1994.
Garth Garramone, D.O.	Physician in private practice since 2004.
Norman Neslin, M.D.	Physician in private practice since 1987.
Robert Pavelock, M.D.	Physician in private practice since 1987.
Bradley Sklar, M.D.	Physician in private practice since 1993.
Stanley Weiselberg, M.D.	Physician in private practice since 1984.



Based on this information, staff from the Division of Certification and Surveillance concluded that those proposed managers of the company are persons of good moral character whose training and experience demonstrate competency to operate an ambulatory surgery center. The members are of such character, experience, competence and standing as to give reasonable assurance of their ability to conduct the affairs of the center so as to provide proper care for the patients to be served at the proposed facility.

Associated Facility Histories

None of the applicants disclosed ownership/operator association with a medical care facility, other than the private practice of medicine, either personally or by any member of their immediate family.

From a programmatic perspective, approval is recommended contingent upon:

1. Submission of an executed transfer and affiliation agreement that is acceptable to the Department, with a local acute care hospital.
2. Submission of a staffing plan, acceptable to the Department, confirming that staff of the Center will be separate and distinct from staff of other entities.
3. Submission of a proposal, acceptable to the Department, regarding signage that clearly denotes that the center is separate and distinct from other adjacent entities.
4. Submission of a plan, acceptable to the Department, that reflects an entrance to the center that does not disrupt any other entity's clinical program space.
5. Submission of documentation, acceptable to the Department, that the clinical space will be used exclusively for this purpose.
6. Submission of an agreement, acceptable to the Department, regarding the provision of quality oversight functions.
7. Submission of evidence of a protocol ensuring all physicians practicing at the ASC commit, in writing, to maintain in good standing any responsibilities with all acute care hospitals where privileges have been granted.

092142 Need Analysis
Mohawk Valley EC, LLC

PROJECT DESCRIPTION

Mohawk Valley EC, LLC (MVEC) requests approval to certify a single specialty ambulatory surgery center to provide endoscopy services at 116 Business Park Drive, Utica, NY.

NEED SUMMARY

MVEC requests approval to construct an ambulatory surgery center with four procedure rooms specializing in endoscopy procedures.

The seven physicians that are members of MVEC plan to perform 6,000 endoscopy procedures per year at the new facility.

The gastroenterology group (Digestive Disease management (DDM)) reports that there is a current backlog of 5,000 to 7,000 outpatient gastroenterology procedures in their service area. In order to reduce this backlog they plan to recruit two new physicians in the next twelve months. The proposed ambulatory surgery center is considered essential to successfully recruit additional physicians and to have sufficient capacity to meet the growing demand for colorectal screenings.

Approval is recommended for a limited life of five years.

Analysis

MVEC plans to operate an ambulatory surgery center specializing in endoscopy services. The proposed center will have four operating rooms.

There are seven gastroenterologists that have committed to perform the following volume of procedures at the proposed center:

<i>Physicians</i>	<i>Annual Procedures</i>
Stanley Weiselberg	815
Norman Neslin	850
Robert Pavelock	850
Bradley Sklar	850
Richard Cherkpak	850
Brett Ghandi	850
Garth Garramone	875
Total	6,000

Existing Freestanding Ambulatory Surgery Centers — Central New York		
Facility	County	2008 Utilization
Digestive Disease Center of CNY, LLC	Onondaga	NR
Endoscopic Procedure Center	Onondaga	4,243
Harrison Center Outpatient Surgery	Onondaga	3,869
North Country Orthopedic ASC	Jefferson	1,898
Specialists' One-Day Surgery	Onondaga	9,240
Specialty Surgery Center of CNY	Onondaga	6,905
Syracuse Endoscopy Associates	Onondaga	6,133

SOURCE SPARCS

MVEC reports that three of the seven gastroenterologists are over 57 years of age. They have not been able to recruit new gastroenterologists for the last seven years. They report that they need to have an ambulatory surgery center in order to recruit new gastroenterologists to their practice.

The Digestive Disease management (DDM) group's seven physicians currently perform approximately 20,000 outpatient procedures per year. DDM anticipates adding two new physicians within the next year. The applicant reports that each physician added to the practice will increase the surgical volume by 2,000 to 3,000 procedures.

DDM states that there is not sufficient capacity to handle the new DDM physicians and the additional surgical volume generated by them.

DDM reports that there is a 10 to 14 week wait for endoscopy procedures with approximately 500 patients waiting each week. The physicians estimate that there is a current backlog of 5,000 to 7,000 outpatient procedures.

DDM expects significant growth in screening colonoscopies and other outpatient endoscopic procedures based on the area's aging population and increasing focus on preventive medicine.

DDM's physician practice has not had an opportunity to meet the service needs of adjacent counties such as Lewis and Chenango because the physicians are currently overextended serving patients from the three core counties they serve (Oneida, Herkimer and Madison). According to data from the Expanded Behavioral Risk Factor Surveillance System (BRESS) Report: July 2008 – June 2009 (Age Adjusted), in counties outside New York City 66.30 percent of adults aged 50 and older reported having a sigmoidoscopy or colonoscopy within the past 10 years. The chart below shows the results for the five county areas around Utica where DDM's proposed facility will be located.

Percent of Adults Aged 50 or Older having a Sigmoidoscopy Or Colonoscopy within the Past 10 years (Age Adjusted)

County	Percent
Oneida	66.2
Chenango	51.3
Herkimer	59.8
Lewis	45.8
Madison	69.6
New York State Outside NYC	66.3

SOURCE: Behavioral Risk Factor Surveillance System (BRESS)

DDM states that outside the two counties (Oneida and Madison) that are primarily served by DDM, the other counties are below average for colorectal screenings.

The applicant states that the proposed ambulatory surgery center and the recruitment of additional gastroenterologists will lead to the expansion of gastroenterology services for this five county region.

Population Projections by County
Age 50 – 74
2010 – 2020

County	2010	2020	Change	Percent
Chenango	15,199	16,200	1,001	6.6
Herkimer	18,331	19,412	1,081	5.9
Lewis	7,242	7,920	678	9.4
Madison	19,280	21,218	1,938	10.1
Oneida	63,183	67,588	4,405	7.0
Total	123,235	132,338	9,103	7.4

Source: Cornell University Program on Applied Demographics New York State and County Population Projections by Age and Sex – Preliminary Population Projections by Age and Sex, New York State and 62 counties, 2005 – 2035.

The primary population targeted for colorectal screening (ages 50 – 75) is projected to increase by 9,103 (7.4 percent) in the five county area which DDM's proposed facility will serve.

DDM estimates that to bring Chenango, Lewis and Herkimer Counties up to the Upstate New York rate of colorectal screenings, they would need to perform an additional 4,956 colorectal screenings for these three counties.

The data indicate that these three counties are currently underserved. The growth in the population aged 50-74 demonstrate that the demand for colorectal screenings will increase.

DDM reports that their physicians currently perform the following procedures at area hospitals:

<u>Hospital</u>	<u>Annual Gastroenterology Procedures</u>
Faxton-St. Luke's	7,000
St. Elizabeth's	9,000
Oneida Community Hospital	<u>5,000</u>
Total	21,000

DDM reports that there is not sufficient outpatient surgical capacity to handle the new DDM physicians and the additional surgical volume generated by them. The applicant states that Faxton-St. Luke's and St. Elizabeth Hospitals cannot accommodate additional DDM physicians without expanding their facilities. Although both hospitals have offered to build additional procedure rooms, DDM reports that the proposed ambulatory surgery center is essential to successfully recruit the new gastroenterologists.

DDM's plan is to maintain the current volume of procedures performed at the area hospitals and to expand their practice through the recruitment of additional gastroenterologists that will generate the additional procedures that will be performed at the ambulatory surgery center.

CONCLUSION

Approval is recommended for a limited life of five years from the date of the issuance of an operating certificate, with the following contingencies:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation.

Said reports should include:



- Data showing actual utilization including procedures;
- Data showing breakdown of visits by payor source;
- Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
- Data showing number of emergency transfers to a hospital;
- Data showing percentage of charity care provided; and
- Number of nosocomial infections recorded during the year in question.
[RNR]

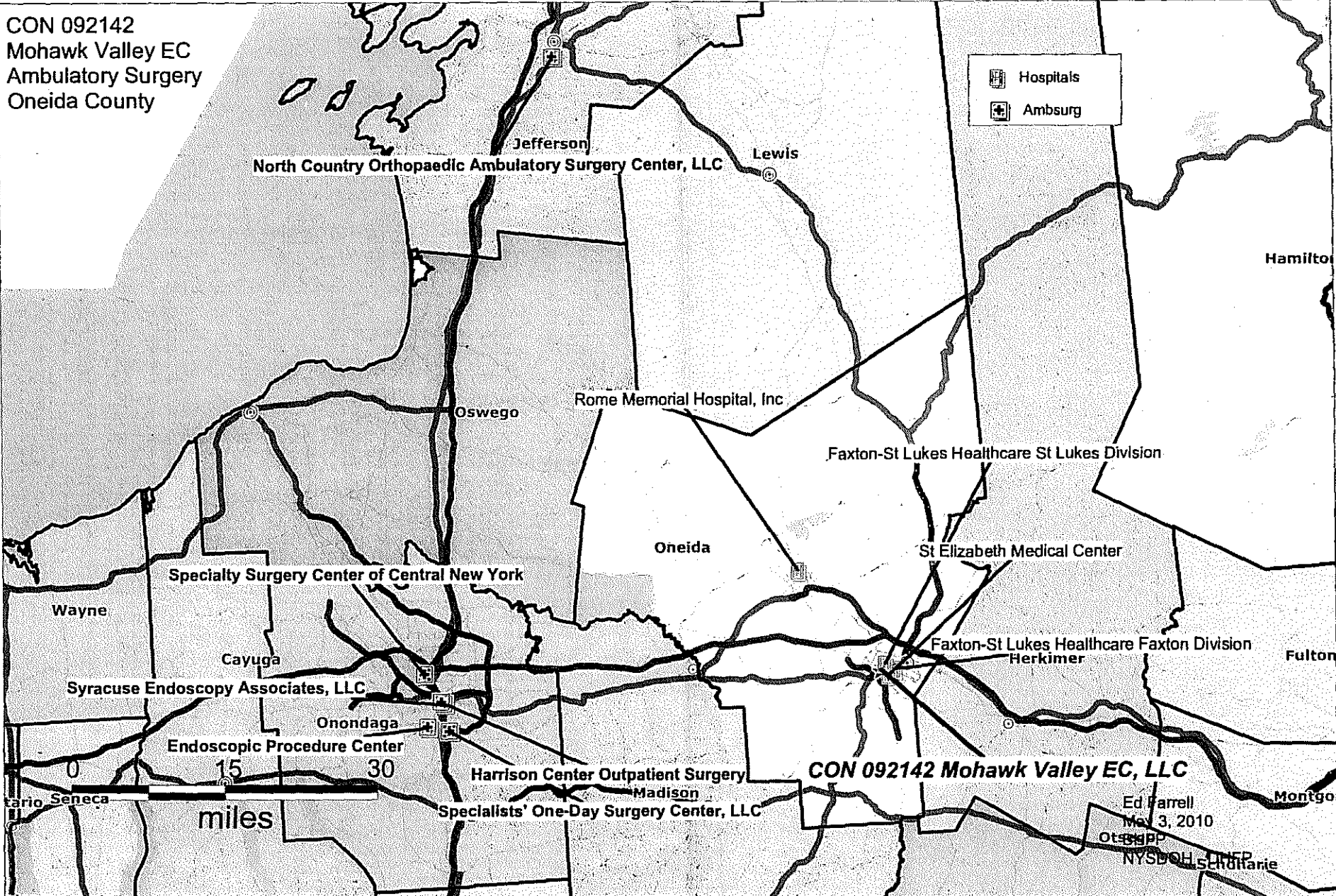
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) 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 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 the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR]

From a need perspective, contingent approval is recommended.

Attachment: Map

CON 092142
Mohawk Valley EC
Ambulatory Surgery
Oneida County

	Hospitals
	Amburg



North Country Orthopaedic Ambulatory Surgery Center, LLC

Rome Memorial Hospital, Inc

Faxton-St Lukes Healthcare St Lukes Division

Specialty Surgery Center of Central New York

St Elizabeth Medical Center

Syracuse Endoscopy Associates, LLC

Faxton-St Lukes Healthcare Faxton Division
Herkimer

Endoscopic Procedure Center

CON 092142 Mohawk Valley EC, LLC

Specialists' One-Day Surgery Center, LLC

Ed Farrell
May 3, 2010

Otsapp
NYS DOH, LNEP
Scholarie

**092142 Need Analysis
Mohawk Valley EC, LLC**

PROJECT DESCRIPTION

Mohawk Valley EC, LLC (MVEC) requests approval to certify a single specialty ambulatory surgery center to provide endoscopy services at 116 Business Park Drive, Utica, NY.

NEED SUMMARY

MVEC requests approval to construct an ambulatory surgery center with four procedure rooms specializing in endoscopy procedures.

The seven physicians that are members of MVEC plan to perform 6,000 endoscopy procedures per year at the new facility.

Faxton-St. Luke's Healthcare (FSLH) reports that they have a total of 9 endoscopy procedure rooms with a capacity to perform 22,500 endoscopy procedures. In 2009, there were 11,117 endoscopies performed at FSLH, which is 45 percent of the available capacity.

There is an existing capacity that can meet the demand for endoscopy procedures.

Disapproval is recommended.

Analysis

MVEC plans to operate an ambulatory surgery center specializing in endoscopy services. The proposed center will have four operating rooms.

There are seven gastroenterologists that have committed to perform the following volume of procedures at the proposed center:

<i>Physicians</i>	<i>Annual Procedures</i>
Stanley Weiselberg	815
Norman Neslin	850
Robert Pavelock	850
Bradley Sklar	850
Richard Cherkpak	850
Brett Ghandi	850
Garth Garramone	875
Total	6,000

Existing Freestanding Ambulatory Surgery Centers — Central New York		
Facility	County	2008 Utilization
Digestive Disease Center of CNY, LLC	Onondaga	NR
Endoscopic Procedure Center	Onondaga	4,243
Harrison Center Outpatient Surgery	Onondaga	3,869
North Country Orthopedic ASC	Jefferson	1,898
Specialists' One-Day Surgery	Onondaga	9,240
Specialty Surgery Center of CNY	Onondaga	6,905
Syracuse Endoscopy Associates •	Onondaga	6,133

SOURCE SPARCS

MVEC is a limited liability company whose seven members are also partners in Digestive Disease Medicine of Central New York, LLP (DDM), a medical practice that has provided gastroenterology services to patients primarily residing in Herkimer, Madison, and Oneida counties for over 20 years.

DDM reports that in 2008, they provided 19,173 endoscopy procedures at either St. Elizabeth Medical Center, Oneida Healthcare Center, and the Faxton Division and the St. Luke's Division of Faxton-St. Luke's Healthcare.

DDM reports that they are currently unable to meet the demand for endoscopy procedures from its existing patient base. They report that there is currently a 10-14 week wait for outpatient endoscopy procedures.

Faxton-St. Luke's Healthcare

Faxton-St. Luke's Healthcare (FSLH) reports that they currently operate nine endoscopy procedure rooms. The St. Luke's campus has 3 procedure rooms and the Faxton Multi-Specialty Ambulatory Surgery Center has 6 endoscopy procedure rooms.

FSLH states that each of the 9 procedure rooms has an annual capacity for 2,500 cases. This equals a total capacity for 22,500 cases. In 2009, there were 11,117 endoscopies performed at FSLH, which is 45 percent of the available capacity.

The seven endoscopists that are proposed members of the Mohawk Valley EC, LLC performed 6,845 endoscopy procedures at FSLH in 2009. This physician group provided 68 percent of the total procedures performed at FSLH facilities in 2009.

FSLH reports that they have offered to cooperate with the endoscopy group to enhance the hospital's productivity in providing outpatient endoscopy services and in the recruitment of additional physicians.

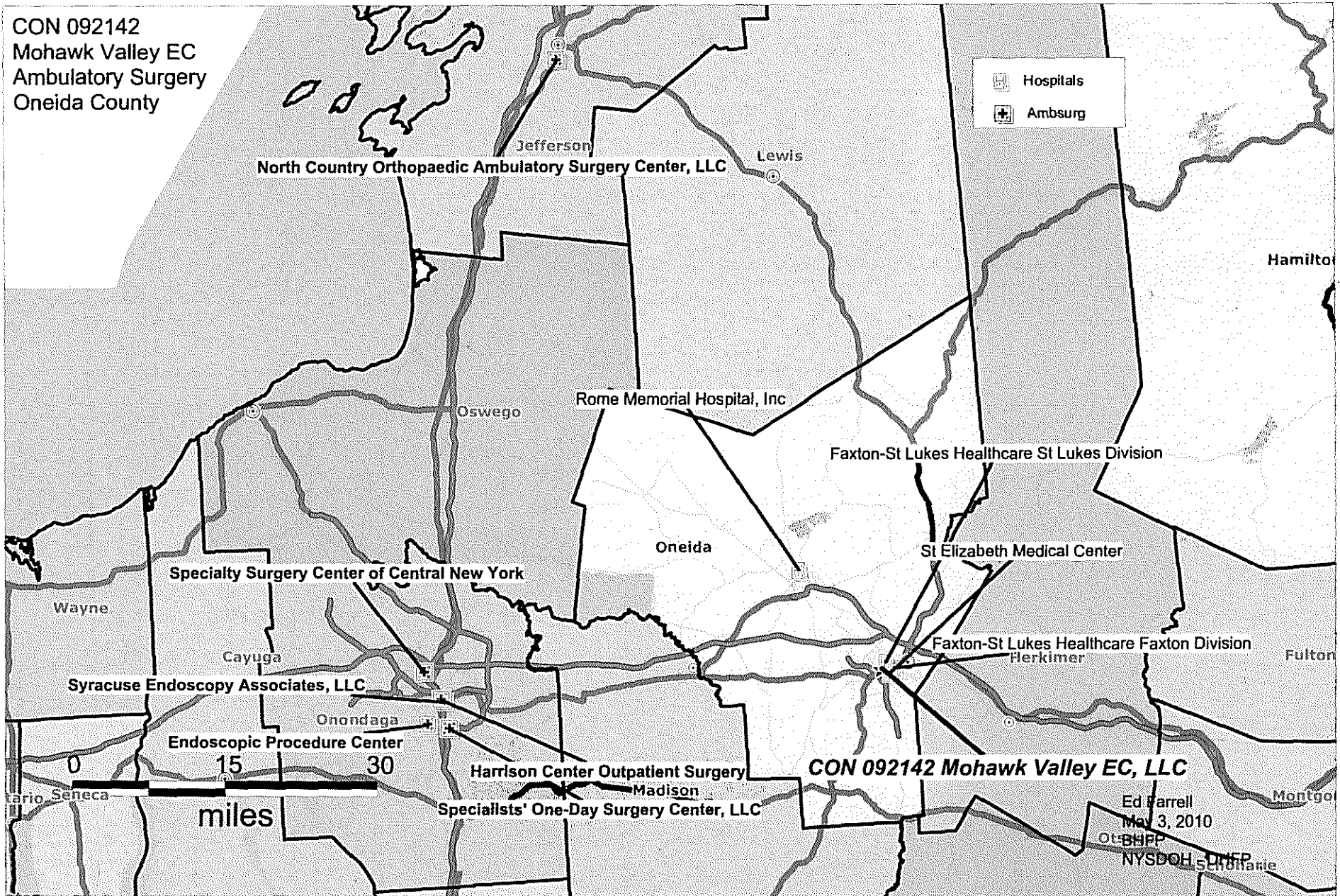
Conclusion

Based on the analysis provided by Faxton-St. Luke's Healthcare, there are existing procedure rooms that can meet the demand for endoscopy procedures.

Disapproval is recommended.

CON 092142
Mohawk Valley EC
Ambulatory Surgery
Oneida County

Hospitals
Amburg



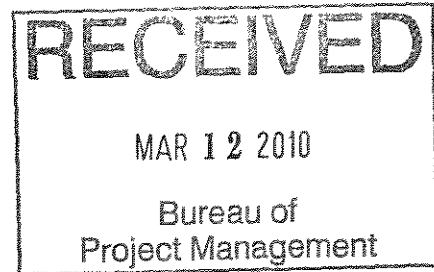
CON 092142 Mohawk Valley EC, LLC

Ed Farrell
May 3, 2010
Otsego
NYSDOH, UNFP



March 10, 2010

Mr. Jeffrey Rothman, Director
Bureau of Project Management
New York State Department of Health
Hedley Park Place, 6th Floor
433 River Street
Troy, NY 12180-2299



RE: CON# 092142 – Mohawk Valley EC, LLC

Dear Mr. Rothman:

Attached is the architectural response to the question raised by the Bureau of Architectural and Engineering Facility Planning regarding the above referenced Certificate of Need application.

Question 1:

1997 NFPA 101: 6-2,4.2: "Openings through floors, such as stairways, hoistways for elevators, dumbwaiters, inclined and vertical conveyors; shaftways used for light, ventilation, or building services; or expansion joints and seismic joints used to allow structural movements, shall be enclosed with fire barrier walls. Such enclosures shall be continuous from floor to floor or floor to roof. Openings shall be protected as appropriate or the fire resistance rating of the barrier." The proposed plans indicate an unprotected vertical opening at the entrance lobby. Please reconfigure the vertical opening so that it is in compliance with the above cited regulation.

Response:

Refer to attached letter from Optimus Architecture.

If any further information is required, please contact me at your convenience at (518) 583-4900. Thank you for your assistance with this application.

Sincerely,

Ann M. Gormley
Consultant

Encs

CC: Robert Woods, R.A.
Bureau of Architectural and Engineering

71041

187 East Market Street
Suite 180
Rhinebeck NY 12572

845 876 8202
845 876 8112 fax
optimusarchitecture.com



March 9, 2010

Bureau of Project Management
New York State Department of Health
Hedley Park Place, 6th Floor
433 River Street, Troy NY 12180-2299
Attn: Jeffrey Rothman

Re: 092142 B
Mohawk Valley EC, LLC
(Oneida)
Establish and construct a single specialty ambulatory surgery center
providing endoscopy services, at 116 Business Park Drive, Utica


Dear Mr. Rothman:

This letter is in response to a letter from Robert Woods, RA, Bureau of Architectural and Engineering Facility Planning, requesting additional information in order to complete review of the application referenced above. The vertical opening in question at the Main Lobby is being treated as an Atrium per NFPA 101-97 Section 6-2.4.6. As such, we are providing the following to comply with this section:

- a. The Atrium is separated from adjacent spaces by a one-hour rated fire barrier with opening protectives.
- b. Access to exits is permitted within the atrium. Exit discharge in accordance with 5-7.2 is permitted within the atrium.
- c. The occupancy classification of the Atrium is Ordinary as allowed by this code.
- d. The entire building will be protected throughout by an approved, supervised automatic sprinkler system in accordance with section 7-7.
- e. An engineering analysis will be performed to demonstrate the buildings compliance with the smoke layer interface requirement.
- f. An engineered smoke control system will be installed to meet the requirements of (e) above and will be independently activated by:
 - i. The required automatic sprinkler system, and;
 - ii. Manual controls that are readily accessible to the fire department.

Having provided the aforementioned information showing compliance with the noted regulations, we respectfully request that the review of this project be completed for this application. Please note our floor plan as shown on our CON plan will not need revising since we are meeting the requirements of the code based on our summary noted above.

Very truly yours,

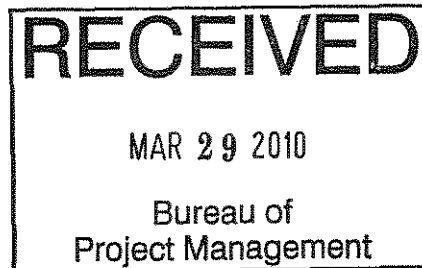


David A. Souers, AIA, ACHA, ASHE

March 26, 2010

Certified Mail

Mr. Jeff Rothman
New York State Department of Health
Bureau of Project Management
433 River Street, 6th Floor
Troy, New York 12180-2299



RE: Certificate of Need Application - CON #092142
Mohawk Valley E.C., L.L.C. (MVEC)
(Digestive Disease Management of Central New York, LLP)

Dear Mr. Rothman,

Thank you for the Department's February 5, 2010 correspondence regarding the referenced Certificate of Need application and for granting a 30 day extension for a response.

Our understanding is that the proposed DDM ASC will be a single specialty facility, restricted to gastroenterology/endoscopy procedures. Thus, although your correspondence and questions relate to all operating room capacity or utilization, for purposes of this letter Faxton-St. Luke's Healthcare (FSLH) responses only relate to our separate gastroenterology/endoscopy procedure rooms.

Impact of the Proposed ASC on FSLH's community-oriented services.

- 1. FSLH will lose much needed revenue should this free standing ambulatory surgery unit be approved. FSLH is a disproportionate share hospital due to our high Medicaid/SSI utilization. The following is an explanation of the potential revenue impacts that this ASC will have should all of the outpatient endoscopy related procedures currently performed be relocated to the newly proposed ASC.

Outpatient Cases Performed by Group	6,845
Revenue Loss from GI Cases Performed by Group in 2009 Based on 12 Months of Actual Revenue (Cash Receipts)	\$ 7,321,421
Direct Cost of Above Cases Based on 12 Months of Actual Direct Costs	<u>\$ 1,562,923</u>
Net Revenue Loss From GI Cases Performed by Group	\$ 5,758,498

71822

2. As indicated above, we project up to a \$5.7 million net operating loss as a result of this proposed ASC. Should that or a significant portion of that loss take place, the following needed safety net services that are provided by FSLH would be in jeopardy:
 - a. We are the sole community provider of Maternal/Child Health Services including the Level II Nursery in the Utica, New York market. Currently upwards of 55% of our approximately 2,200 annual deliveries are Medicaid and self pay. Based on Medicare approved step down methodologies, we lose \$1.5 million dollars on maternal/newborn services annually. A service such as this is supported by endoscopy revenues, one of the few remaining profitable services provided at the hospital.
 - b. Since 1992, we have been operating a 26-bed inpatient psychiatric facility, one of two in our community. Our Medicaid/self pay charges for this service are approximately 45% and based on Medicare approved step-down methodologies, this service loses \$2 million dollars on an annual basis.
 - c. At our Faxon Campus, we operate an Urgent Care Center that has annual visits of 18,000-19,000 patients. This safety net service had a loss of \$1.4 million in 2009, and a Medicaid/self pay payer mix of 51%.
 - d. During 2009, we have documented costs of \$1 million for various community related wellness and screening activities such as Community Diabetes Program, Lymphadema Therapy, Wellness Center, Oncology Clinical Trials, Tobacco Cessation Program, Colorectal Screening, Breast Care Center, Palliative Care, and Integrative Medicine which FSLH provides as community services.
 - e. FSLH provides primary care services in rural areas, i.e. Boonville, Barneveld, and Waterville. Our North Utica office sees a very high percentage of refugees. Combined our eight primary care sites lost approximately \$3.8 million in 2009. In 2009, 16% of our visits were Medicaid/self pay. These facilities in many cases are the sole community provider of primary care services in those markets and our ability to support them given their negative operating margins would be in jeopardy.

Total utilization of operating (endoscopy) capacity at FSLH (by percentage) during regular hours and off hours.

FSLH currently operates nine (9) endoscopy procedure rooms, three (3) acute care based at the St. Luke's Campus and six (6) at our Faxon Outpatient Multi-specialty Ambulatory Surgery Center. If we assume a conservative utilization schedule for each procedure room, we could perform ten (10) procedures per 8-hour day (48 minutes per procedure). Each of our nine procedure rooms could annually perform 2,500 cases, for a total annual capacity, (again from a conservative perspective) of 22,500 cases. In 2009, our total endoscopies performed were 11,117 which is approximately a 45% utilization of those rooms. The number of procedures done during off hours or on weekends is approximately 1,000 per year and are currently only performed on an emergency basis.

A breakdown of the OR (endoscopy) utilization by total inpatient and total ambulatory cases.

During 2009, FSLH performed 1,033 procedures on inpatients and 10,084 outpatients for a total of 11,117 annually.

Names of the surgeons (endoscopists) who currently perform endoscopy at FSLH and the number of ambulatory surgery cases (endoscopy procedures) for each in the most recent calendar year.

Stanley Weiselberg, MD	817
Norman Neslin, MD	803
Robert Pavelock, MD	841
Bradley Sklar, MD	1,072
Richard Cherpak, MD	1,223
Brett Ghandi, MD	1,004
Garth Garramone, DO	1,085
Total	6,845

Whether FSLH reserve OR (endoscopy) time on a regular basis ("block time") for any of the surgeons (endoscopists) in question. If so, please include an OR (endoscopy schedule) weekly or monthly) delineating the number of ORs (endoscopy procedure rooms) and the times reserved for these practitioners.

See Attachment 1 – Faxton-St. Luke's Healthcare – Endoscopy Block Booking Schedule

FSLH does utilize block time by physician, but also utilizes the open room concept to make sure that emergencies and add-on's can efficiently be accommodated.

Audited financial statement for the last two years available.

See Attachment 2 - Faxton-St. Luke's Healthcare and Subsidiaries Consolidated Financial Statements, December 31, 2008 and 2007

Expenditures for Bad Debt and Charity Care in your two most recent fiscal years.

	<u>2009</u>	<u>2008</u>
Bad Debt	\$9,012,773	\$10,581,193
Charity Care	<u>\$1,399,004</u>	<u>\$ 1,724,000</u>
Total	\$10,411,777	\$12,305,193

Additional Information: Analysis of access to outpatient/ASC based endoscopy services in the greater Utica area.

Utilizing 2008 outpatient/ASC data obtained from HANYS/SPARCS, FSLH analyzed the Utica area's access to outpatient endoscopy services and associated per capita utilization in comparison to other UpState New York Metropolitan Areas. This analysis revealed the following:

a. The Utica-Rome area utilization rate per 1,000 population was 54, the highest of the six areas analyzed. The next highest utilization rates per 1,000 population were Binghamton, Buffalo and Albany at 35, 31, 31 respectively. Based upon this data, there does not appear to be an access to services issue in the Utica area.

b. The predicted outpatient endoscopies for each Metropolitan area were analyzed using HANYS' proprietary Outpatient Forecaster 2.10. This predicted approach reaches the same conclusion as above: more Endoscopies are performed in Utica per capita in an outpatient setting than any other UpState metro area (15,881 actual Utica area Endoscopies in ASUs in 2008 vs 10,187 outpatient total predicted). The Utica area's predicted utilization rate per 1,000 population of 34.33 compares to the six area average of 33.60. The Utica area's actual utilization rate per 1,000 population of 54 represents an increment of 56% over the predicted rate.

c. In analyzing 2008 outpatient data for 10 upstate NY counties, inclusive of the five counties indicated by DDM as being their service area (Oneida, Herkimer, Madison, Lewis & Chenango), the DDM five county area reported 41.74 procedures/1,000 population vs 30.52 for the five comparison counties (Broome, Erie, Albany, Monroe & Onondaga). Removing Onondaga County from the five comparison counties, due to its apparent low reporting, would result in a use rate of 33.64, still notably lower than the DDM five county area's 41.74. Access issues or unmet need are not evident in the DDM defined five county area.

d. In the DDM defined service area, DDM in 2008 reported less than a 50% market share in the five county area at 46.21%. It had market shares of .96% in Chenango and 17.01% in Lewis. Even assuming there were an unmet need in those counties, there is no reason to believe that DDM would receive 100% of any calculated unmet need. Other physician practices could also be recruiting/targeting these areas (Syracuse serves Madison, Binghamton serves Chenango, Rome serves Oneida and Lewis, the Slocum-Dickson practice in Utica, etc.) and the data indicates that there is unused capacity in all of those areas. Further, DDM's own analysis indicates that DDM historically has not targeted patient populations with access issues. The Self Pay, Medicaid and Medicaid HMO payor mix for the 5 County area in total was 10.35% in 2008. The DDM payor mix for this population was 3.18%.

Please see Attachment 3 for detailed information in support of this summary analysis.


FSLH provides the following summary points in regard to our response to the Department's information request:

- FSLH has enjoyed a good working relationship with the DDM physicians and respects the service that they provide to the community;
- FSLH has offered to have DDM participate with the hospital in a process that would enhance their and the hospital's efficiencies and productivity in providing outpatient endoscopy services;
- FSLH has offered DDM assistance in their recruitment of additional physicians;
- DDM provides a substantial amount of the outpatient Endoscopy volume at FSLH (68% of total procedures);
- FSLH projects up to a \$5.7 million net operating loss as a result of the proposed DDM ASC. Should that take place, a number of needed safety net services that are provided by FSLH would be in jeopardy;

- In 2009, FSLH total endoscopies performed were 11,117 which is approximately a 45% utilization of those rooms;
- In the past two years, FSLH has provided approximately \$23M of Charity Care and incurred Bad Debts;
- Analysis of available data concludes that there does not appear to be an access issue for outpatient endoscopy services in the Utica area or the defined DDM five county area.

If you have any questions, please feel free to contact me at sperra@mvnhealth.com or 315.624.6002.

Sincerely,



Scott H. Perra, FACHE
President/CEO

cc: Mohawk Valley E.C., L.L.C.
c/o Ms. Ann M. Gormley
Empire Health Advisors
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Tom Jung
New York State Department of Health
Division of Health Facility Planning
433 River Street, 6th Floor
Troy, New York 12180-2299

Christopher Delker
New York State Department of Health
Division of Health Facility Planning
433 River Street, 6th Floor
Troy, New York 12180-2299

Garth Garramone, DO
Digestive Disease Medicine of CNY
110 Business Park Drive
Utica, NY 13502

SL Blocks
2/19/2010

	Monday		Tuesday		Wednesday		Thursday		Friday	
Room	7:30-4 PM	After 4 PM	7:30-4 PM	After 4 PM	7:30-4 PM	After 4 PM	7:30-4 PM	After 4 PM	7:30-4 PM	After 4 PM
1	DDM Outpatients	DDM Inpatient & Add-ons.	DDM Outpatients	DDM Inpatient & Add-ons.	DDM Outpatients	DDM Inpatient & Add-ons.	DDM Outpatients	DDM Inpatient & Add-ons.	DDM Outpatients	DDM Inpatient & Add-ons.
2	SDMG		SDMG		SDMG		SDMG		SDMG	
3	DDM Outpatients	DDM Inpatient & Add-ons	DDM Outpatients	DDM Inpatient & Add-ons	DDM Outpatients	DDM Inpatient & Add-ons	DDM Outpatients	DDM Inpatient & Add-ons	DDM Outpatients	DDM Inpatient & Add-ons

Faxton Blocks
2/19/2010

	Monday	Tuesday	Wednesday	Thursday	Friday
Room	7:30-5 PM	7:30-5 PM	7:30-5 PM	7:30-5 PM	7:30-5 PM
1	DDM	DDM	DDM	DDM	DDM
2	DDM	DDM	DDM	DDM	DDM
3	Ojuro	Ojuro	Ojuro/Blom	Ojuro/Neale	Ojuro
4	DDM	DDM	DDM	DDM	DDM
5	DDM	DDM	DDM	DDM	DDM
6	DDM	DDM	DDM	DDM	DDM

DDM- Drs. Weiselberg, Neslin, Pavlok, Sklar, Cherpak, Gandhi, Garramone

SDMG- Drs. Mirza, Ojuro

Attachment 1

Faxton-St. Luke's Healthcare – Endoscopy Block Booking

**FAXTON-ST. LUKE'S HEALTHCARE
AND SUBSIDIARIES**

Consolidated Financial Statements
(Governmental Filing Requirements)

December 31, 2008 and 2007

Attachment 2

INDEPENDENT AUDITOR'S REPORT

The Board of Directors
Faxton-St. Luke's Healthcare:

We have audited the accompanying consolidated balance sheets of Faxton-St. Luke's Healthcare and Subsidiaries as of December 31, 2008 and 2007, and the related consolidated statements of operations and changes in net assets and cash flows for the years then ended. These consolidated financial statements are the responsibility of the management of Faxton-St. Luke's Healthcare. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Faxton-St. Luke's Healthcare and Subsidiaries as of December 31, 2008 and 2007, and the consolidated results of their operations and changes in net assets and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The consolidated financial statements referred to above include the accounts of Faxton-St. Luke's Healthcare and its Subsidiaries, Faxton Leasing, LLC and Network Data Systems (NDS), and were prepared primarily to meet credit analysis and governmental filing requirements. Such financial statements are not intended to be general purpose financial statements (see note to consolidated financial statements 1(b)).

This report is intended solely for the information and use of the board of directors and management of Faxton-St. Luke's Healthcare and subsidiaries, the New York State Department of Health and other Offices and Agencies of the state of New York and selected financial institutions and is not intended to be and should not be used by anyone other than these specified parties.

Fust Charles Chambers LLP

June 5, 2009

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Balance Sheets

December 31, 2008 and 2007

Assets	2008	2007
Current assets:		
Cash and cash equivalents	\$ 3,538,805	7,246,277
Assets limited as to use	3,570,222	4,597,363
Investments	15,396,789	20,574,509
Patient accounts receivable, net of reserve for doubtful accounts of \$7,544,924 in 2008 and \$5,874,648 in 2007	39,909,502	35,064,965
Other receivables	1,399,482	1,578,528
Inventories	5,188,882	5,234,376
Prepaid expenses and other current assets	2,626,685	2,461,609
Due from affiliates, net	915,499	2,326,376
Net investment in direct financing lease	547,116	547,116
Estimated third-party payor settlements, net	<u>4,445,345</u>	<u>2,677,711</u>
Total current assets	77,538,327	82,308,830
Interest in and amounts due from Faxton-St. Luke's Healthcare Foundation	2,802,287	6,954,915
Investment in and amounts due from Faxchil Realty, Inc.	4,604,696	2,996,764
Investment in and amounts due from SLM Medical Office Building, Inc.	199,307	892,705
Due from affiliates, net	1,906,305	879,355
Assets limited as to use	5,226,874	5,176,223
Investments	4,528,164	4,528,164
Net investment in direct financing lease	3,999,719	4,203,798
Property and equipment, net	85,395,077	81,823,360
Unamortized debt issuance costs	1,509,813	1,716,861
Intangible assets	861,054	1,005,994
Other assets	<u>3,462,619</u>	<u>2,900,105</u>
 Total assets	 <u>\$ 192,034,242</u>	 <u>195,387,074</u>

<u>Liabilities and Net Assets</u>	<u>2008</u>	<u>2007</u>
Current liabilities:		
Current portion of long-term debt	\$ 5,077,471	4,685,307
Current portion of capital lease obligations	3,331,994	2,900,138
Accounts payable	13,156,811	11,847,687
Accrued payroll, payroll taxes and benefits	8,846,849	8,096,502
Current portion of estimated self-insured liabilities	447,502	556,022
Accrued interest payable	854,229	910,758
Other current liabilities	538,716	707,163
	<u>32,253,572</u>	<u>29,703,577</u>
Total current liabilities		
Long-term debt, net of current portion:		
Notes payable	6,631,440	5,541,519
Civic facility revenue bonds	41,336,391	45,861,303
Capital lease obligations	8,428,187	6,946,079
	<u>56,396,018</u>	<u>58,348,901</u>
Total long-term debt, net of current portion		
Unrealized loss on interest rate swaps	6,373,560	2,153,840
Estimated self-insured liabilities, net of current portion	2,623,357	3,179,092
Minority interest in Faxton Leasing, LLC	781,294	781,294
	<u>98,427,801</u>	<u>94,166,704</u>
Total liabilities		
Net assets:		
Unrestricted	87,272,767	95,355,330
Temporarily restricted	1,805,510	1,336,876
Permanently restricted	4,528,164	4,528,164
	<u>93,606,441</u>	<u>101,220,370</u>
Total net assets		
Commitments and contingencies (notes 5, 7 and 10)		
Total liabilities and net assets	<u>\$ 192,034,242</u>	<u>195,387,074</u>

See accompanying notes to consolidated financial statements.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Statements of Operations and Changes in Net Assets

Years ended December 31, 2008 and 2007

	<u>2008</u>	<u>2007</u>
Unrestricted revenues, gains and other support:		
Net patient service revenue	\$ 249,205,909	226,118,064
Other revenue	6,546,662	6,094,272
Investment income, net of fees	837,528	4,756,057
Contributions	548,583	443,720
Net assets released from restrictions used for operations	<u>1,000</u>	<u>302</u>
Total unrestricted revenues, gains and other support	<u>257,139,682</u>	<u>237,412,415</u>
Expenses:		
Salaries and wages	103,970,224	95,694,502
Employee benefits	24,891,988	22,331,132
Supplies and other	99,280,172	88,811,243
Depreciation and amortization	12,013,602	11,620,595
NYS gross receipts taxes	-	188,412
Interest	3,714,557	3,811,189
Provision for bad debts	9,026,867	7,132,309
Loss (gain) on disposal of property and equipment	<u>(3,305)</u>	<u>43,255</u>
Total expenses	<u>252,894,105</u>	<u>229,632,637</u>
Excess of revenues over expenses	<u>\$ 4,245,577</u>	<u>7,779,778</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Statements of Operations and Changes in Net Assets, Continued

Years ended December 31, 2008 and 2007

	<u>2008</u>	<u>2007</u>
Unrestricted net assets:		
Excess of revenues over expenses	\$ 4,245,577	7,779,778
Change in fair value of interest rate swaps	(4,219,720)	(711,748)
Change in interest in unrestricted net assets of Foundation	(1,394,965)	203,264
Contributions used for capital acquisitions	543,430	1,325,136
Change in net unrealized gains and losses on investments	<u>(7,256,885)</u>	<u>(1,426,931)</u>
Increase (decrease) in unrestricted net assets	<u>(8,082,563)</u>	<u>7,169,499</u>
Temporarily restricted net assets:		
Income on investments	852	8,804
Change in interest in temporarily restricted net assets of Foundation	468,782	(1,046,909)
Net assets released from restrictions	<u>(1,000)</u>	<u>(302)</u>
Increase (decrease) in temporarily restricted net assets	<u>468,634</u>	<u>(1,038,407)</u>
Total increase (decrease) in net assets	<u>(7,613,929)</u>	<u>6,131,092</u>
Net assets at beginning of year	<u>101,220,370</u>	<u>95,089,278</u>
Net assets at end of year	<u>\$ 93,606,441</u>	<u>101,220,370</u>

See accompanying notes to consolidated financial statements.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Consolidated Statements of Cash Flows

Years ended December 31, 2008 and 2007

	<u>2008</u>	<u>2007</u>
Cash flows from operating activities:		
Change in net assets	\$ (7,613,929)	6,131,092
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation and amortization	12,013,602	11,620,595
Provision for bad debts	9,026,867	7,132,309
Change in interest in net assets of Faxton-St. Luke's Healthcare Foundation	926,183	843,645
Change in net unrealized gains and losses on investments	7,256,885	1,426,931
Change in fair value of interest rate swap	4,219,720	711,748
Amortization of unearned lease income	(343,037)	(357,620)
Net realized loss (gain) on sale of investments	286,644	(3,028,393)
Loss (gain) on disposition of property and equipment	(3,305)	43,255
Loss (gain) in earnings of subsidiaries	(167,990)	543,162
Contributions for capital acquisitions	(543,430)	(1,325,136)
Changes in operating assets and liabilities:		
Receivables	(13,692,358)	(7,791,331)
Inventories, prepaid expenses and other current assets	(119,582)	(688,597)
Due from affiliates, net	2,863,828	(1,372,300)
Accounts payable, accrued expenses and other liabilities	1,834,495	1,900,374
Estimated self-insured liabilities	(664,255)	54,171
Estimated third-party payor settlements	(1,767,634)	301,572
Net cash provided by operating activities	<u>13,512,704</u>	<u>16,145,477</u>
Cash flows from investing activities:		
Purchases of property and equipment	(10,475,008)	(11,491,498)
Proceeds from sale of property and equipment	58,895	4,622
Proceeds (purchases) from sale of investments, net	(2,365,809)	803,127
Increase in other assets	(562,514)	(410,057)
Net decrease in assets limited as to use	976,490	1,389,855
Net cash used in investing activities	<u>(12,367,946)</u>	<u>(9,703,951)</u>
Cash flows from financing activities:		
Proceeds from long-term debt	1,750,000	909,613
Principal payments on long-term debt and capitalized lease obligations	(7,692,776)	(8,036,711)
Minimum direct financing lease payments received	547,116	547,116
Contributions for capital acquisitions	543,430	1,325,136
Net cash used in financing activities	<u>(4,852,230)</u>	<u>(5,254,846)</u>
Increase (decrease) in cash and cash equivalents	<u>(3,707,472)</u>	<u>1,186,680</u>
Cash and cash equivalents at beginning of year	<u>7,246,277</u>	<u>6,059,597</u>
Cash and cash equivalents at end of year	<u>\$ 3,538,805</u>	<u>7,246,277</u>

See accompanying notes to consolidated financial statements.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

December 31, 2008 and 2007

(1) Description of Organization and Summary of Significant Accounting Policies

(a) Organization

Faxton-St. Luke's Healthcare (Healthcare), located in Utica, New York, is a not-for-profit healthcare delivery system providing inpatient, outpatient, emergency care, cancer treatment, rehabilitation, dialysis, maternity, child care, long term care, surgical, psychiatric and community services to residents of the Mohawk Valley Region. Admitting physicians are primarily practitioners in the local area. Mohawk Valley Network, Inc. (MVN), a not-for-profit corporation, is the sole corporate member of Healthcare and various other organizations involved in providing health care services to the Mohawk Valley Region.

(b) Principles of Presentation

The accompanying consolidated financial statements were prepared primarily to meet credit analysis and governmental filing requirements, and are not intended to be general purpose financial statements of a primary reporting entity. Accordingly, such statements do not include the assets, liabilities or results of operations of all subsidiaries or controlled corporations as such terms are defined under generally accepted accounting principles for consolidated financial statements. Healthcare issues consolidated primary reporting entity financial statements.

The accompanying consolidated financial statements include the accounts of Healthcare and its wholly owned subsidiary, Network Data Systems (NDS) and its 55.5% owned subsidiary, Faxton Leasing, LLC (Leasing). Faxton-St. Luke's Healthcare Foundation (Foundation), of which Healthcare is the sole member, SLM Corporation, whose stock is owned by a trust, of which Healthcare is the sole beneficiary, and Faxchil Realty, Inc. (Faxchil), a wholly owned for-profit subsidiary, are included on the equity method of accounting. Centrex Clinical Laboratories, Inc. (Centrex) is the wholly owned subsidiary of Faxchil. St. Luke's Home Residential Health Care Facility, Inc. (Home), in which Healthcare has a sole financial interest at dissolution, is excluded from these consolidated financial statements. All significant intercompany transactions and balances with Leasing and NDS have been eliminated in consolidation.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(b) Principles of Presentation, Continued

Leasing, a 55.5% owned subsidiary, leases property and equipment to Healthcare for radiation therapy services. NDS is a wholly owned limited liability company which leases computer hardware and software to Healthcare. The Foundation is a not-for-profit, tax-exempt corporation that carries out fund raising activities which benefit Healthcare and the Home. Faxchil is a for-profit corporation that manages real property. Centrex is a for-profit corporation that provides clinical laboratory services to Healthcare, physicians and other entities.

(c) Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

(d) Cash and Cash Equivalents

Cash and cash equivalents include certain investments in highly liquid debt instruments with original maturity of three months or less, excluding temporary investments included in assets limited as to use and long-term investments.

(e) Investments

Investments in equity securities with readily determinable fair values and all investments in debt securities are measured at fair value in the balance sheets. The insurance group fixed annuity contract is valued at contract value, which is considered the best representation of fair value. Investment income or loss (including realized gains and losses on investments, interest and dividends) is included in the excess of revenues over expenses unless the income or loss is restricted by donor or law. Unrealized gains and losses on investments are excluded from the excess of revenues over expenses since none of the investments are classified as trading securities.

The Hospital invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market, and credit risks. Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect the amounts reported in the balance sheet.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(f) Assets Limited as to Use

Assets limited as to use represent assets held by trustees under indenture agreements and unexpended debt proceeds for the purchase of equipment. Amounts required to meet current liabilities are classified in the balance sheets as current assets.

(g) Inventories

Inventories are stated at the lower of average cost or market.

(h) Property and Equipment

Property and equipment are recorded at cost. Depreciation is provided over the estimated useful life of each class of depreciable asset and is computed using the straight-line method. Equipment under capital leases and leasehold improvements are amortized on the straight-line method over the lesser of the lease term or the estimated useful life of the asset. Amortization of equipment under capital leases and leasehold improvements is included in depreciation expense.

Interest cost incurred on borrowed funds during the construction of capital assets is capitalized as a component of the cost of acquiring those assets. Interest cost capitalized amounted to approximately \$157,000 in 2008. There was no interest capitalized in 2007.

Gifts of long-lived assets, such as land, buildings or equipment are reported as unrestricted support and are excluded from the excess of revenues over expenses, unless explicit donor stipulations specify how the donated asset must be used. Gifts of long-lived assets with explicit restrictions that specify how the assets are to be used and gifts of cash or other assets that must be used to acquire long-lived assets are reported as restricted support. Absent explicit donor stipulations about how long those long-lived assets must be maintained, expirations of donor restrictions are reported when the donated or acquired long-lived assets are placed in service.

(i) Unamortized Debt Issuance Costs

Debt issuance costs are amortized using the straight-line method, which approximates the effective interest method, over the terms of the related debt. Amortization expense amounted to approximately \$207,000 for 2008 and \$221,000 for 2007. Amortization expense for the next four years will be approximately \$216,000 and approximately \$142,000 for year five.

(j) Intangible Assets

Intangible assets consisting of purchased goodwill, customer lists and a covenant not to compete are being amortized using the straight-line method primarily over fifteen years.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(k) Other Assets

Other assets consist primarily of an investment held with an insurance company and receivables from other health care providers.

(l) Temporarily Restricted Net Assets

Temporarily restricted net assets are those whose use has been limited by donors to a specific time period or purpose.

(m) Permanently Restricted Net Assets (Endowment Funds)

The Hospital maintains various donor-restricted and board-designated funds whose purpose is to provide long-term support for its charitable programs. In classifying such funds for financial statement purposes as either permanently restricted, temporarily restricted or unrestricted net assets, the Board of Directors looks to the explicit directions of the donor where applicable and the provisions of the laws of the State of New York. To constitute an endowment under New York State law, the restriction must arise from a clearly expressed donor limitation, not a limitation from within the beneficiary organization. The Board has determined that, absent donor stipulations to the contrary, the provisions of New York State law do not impose either a permanent or temporary restriction on the income or capital appreciation derived from the original gift. Therefore, all income and appreciation derived from the original gift are transferred to unrestricted net assets absent any restrictions on the use made by the donor.

The Hospital utilizes an investment strategy that emphasizes preservation of principle and total return consistent with prudent levels of risk. Investments are allocated over a diversified portfolio of multiple asset classes of domestic and international equities and bonds.

Under New York State law, the historic dollar value of an endowment fund must be preserved. The historic dollar value is defined as the aggregate fair value in dollars of: an endowment fund at the time it becomes an endowment fund, each subsequent donation to the fund at the time it is made; and each accumulation made pursuant to a direction in applicable gift instrument at the time an accumulation is added to the fund. Certain of the Hospital's donor restricted endowments have experienced losses due to market fluctuations and the continuing requirements of funded programs. Generally accepted accounting principles requires that such excess losses be absorbed by the unrestricted net assets of the Hospital and the future gains be allocated to unrestricted net assets until such losses have been restored. Aggregate, cumulative losses absorbed by the unrestricted net assets at December 31, 2008 amounted to approximately \$1,235,000. Permanently restricted net assets consist of endowment funds of \$4,528,164 at December 31, 2008 and 2007, and are included in long-term investments in the consolidated balance sheets.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(n) Net Patient Service Revenue and Patient Accounts Receivable

Healthcare has agreements with third-party payors that provide for payments to the various organizations within its healthcare delivery system at amounts different from their established rates. Payment arrangements include prospectively determined rates per discharge, cost-based reimbursement, discounted charges, per diem payments and fee-for-service payments. Net patient service revenue and the related patient accounts receivable are reported at the estimated net realizable amounts from patients, third-party payors and others for services rendered, including estimated retroactive adjustments due to future audits, reviews and investigations. Retroactive adjustments are included in the recognition of revenue on an estimated basis in the period the related services are rendered and adjusted in future periods as adjustments become known or as years are no longer subject to such audits, reviews and investigations.

An allowance for doubtful accounts receivable is estimated by management based on periodic reviews of the collectibility of accounts receivable considering historical experience and prevailing economic conditions.

Revenue from the Medicare and Medicaid programs accounted for approximately 52% of Healthcare's net patient service revenue for 2008 and 2007. Laws and regulations governing the Medicare and Medicaid programs are extremely complex and subject to interpretation. As a result, there is at least a reasonable possibility that recorded estimates will change by a material amount in the near term. Patient service revenue decreased by approximately \$248,000 in 2008 and increased by approximately \$608,000 in 2007 related to either settlement of prior year issues or changes in estimates associated with third-party issues.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(n) Net Patient Service Revenue and Patient Accounts Receivable, Continued

Healthcare grants unsecured credit to its patients, most of whom are local residents and are insured under third-party payor agreements. The mix of receivables from patients and third-party payors at December 31 was as follows:

	<u>2008</u>	<u>2007</u>
Medicare	18%	25%
Medicaid	11%	9%
Private payors	32%	34%
Insurance and all others	<u>39%</u>	<u>32%</u>
	<u>100%</u>	<u>100%</u>

(o) Charity Care

Healthcare provides care to patients who meet certain criteria under its charity care policy without charge or at amounts less than established rates. Because Healthcare does not pursue collection of such amounts, they are not reported as net patient service revenue. Charity care charges foregone, based on established rates, were approximately \$1,724,000 and \$1,758,000 for 2008 and 2007, respectively.

(p) Contributions

Unconditional promises to give cash and other assets are reported at fair value at the date the promise is received. Conditional promises to give and indications of intentions to give are reported at fair value at the date the gift is received. Contributions are reported as either temporarily or permanently restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated time restriction ends or purpose restriction is accomplished, temporarily restricted net assets are reclassified as unrestricted net assets and reported in the statements of operations and changes in net assets as net assets released from restrictions. Donor restricted contributions whose restrictions are met within the same year as received are reported as unrestricted contributions in the consolidated statements of operations and changes in net assets.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Description of Organization and Summary of Significant Accounting Policies, Continued

(q) Excess of Revenues over Expenses

The consolidated statements of operations and changes in net assets include excess of revenues over expenses. Changes in unrestricted net assets which are excluded from excess of revenues over expenses, consistent with industry practice, include changes in unrealized gains and losses on investments other than trading securities, permanent transfers of assets to and from affiliates for other than goods and services and contributions of long-lived assets (including assets acquired using contributions which by donor restriction were to be used for the purpose of acquiring such assets).

(r) Income Taxes

Healthcare and the Foundation are not-for-profit corporations and have been recognized as tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue Code. NDS, as a sole member limited liability company, is a disregarded entity, in which case it is by default a 501(c)(3). Leasing is a for-profit limited liability corporation.

(s) Concentration of Credit Risk

Healthcare maintained cash balances above FDIC insurance limitations amounting to approximately \$806,000 at December 31, 2008.

(t) Reclassifications

Certain 2007 amounts have been reclassified to conform with the 2008 presentation.

(2) Intangible Assets

Intangible assets at December 31 were:

	<u>2008</u>	<u>2007</u>
Goodwill	\$ 1,105,874	1,105,874
Accumulated amortization	(562,515)	(487,242)
Customer lists	945,000	945,000
Accumulated amortization	(656,750)	(593,750)
Covenant not to compete	100,000	100,000
Accumulated amortization	<u>(70,555)</u>	<u>(63,888)</u>
	<u>\$ 861,054</u>	<u>1,005,994</u>

Amortization expense for the years ended December 31, 2008 and 2007 was approximately \$145,000. Amortization expense for each of the next four years will be approximately \$145,000 and approximately \$106,000 for year five.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(3) Investments

Assets Limited as to Use

At December 31, assets limited as to use, at fair value, are comprised of the following:

	<u>2008</u>	<u>2007</u>
Cash and cash equivalents	\$ 5,710,956	8,005,249
Guaranteed Investments Contracts	2,750,827	1,350,619
Mutual funds	335,313	417,718
	<u>8,797,096</u>	<u>9,773,586</u>
Classified as current assets	<u>3,570,222</u>	<u>4,597,363</u>
Classified as non-current assets	<u>\$ 5,226,874</u>	<u>5,176,223</u>

Investments

At December 31, investments, at fair value, are comprised of the following:

	<u>2008</u>	<u>2007</u>
Cash and cash equivalents	\$ 2,350,895	1,548,369
Accrued investment income	-	95,868
Mutual funds	16,232,150	17,359,302
Common stock	2,532,070	6,107,822
Government and agency obligations	-	512,692
Real estate investment trust	849,618	981,604
	<u>\$ 21,964,733</u>	<u>26,605,657</u>

The above amounts are included in the accompanying financial statements as follows:

	<u>2008</u>	<u>2007</u>
Investments - current assets	\$ 15,396,789	20,574,509
Cash and cash equivalents	2,039,780	1,476,753
Other receivables	-	26,231
Long-term investments	<u>4,528,164</u>	<u>4,528,164</u>
	<u>\$ 21,964,733</u>	<u>26,605,657</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(3) Investments, Continued

Investment income and gains (losses) on unrestricted investments are comprised of the following for the years ended December 31:

	<u>2008</u>	<u>2007</u>
Investment income:		
Interest income and dividends, net of fees	\$ 1,124,172	1,727,664
Realized gains (losses)	<u>(286,644)</u>	<u>3,028,393</u>
	837,528	4,756,057
Change in net unrealized gains and losses on investments	<u>(7,256,885)</u>	<u>(1,426,931)</u>
	<u>\$ (6,419,357)</u>	<u>3,329,126</u>

The Hospital reviews investments for other-than-temporary impairment whenever the fair value of an investment is less than amortized cost and evidence indicates that an investment's carrying amount is not recoverable within a reasonable period of time. In the evaluation of whether an impairment is other-than-temporary, the Hospital considers the reasons for the impairment, its ability and intent to hold the investment until the market price recovers or the investment matures, compliance with its investment policy, the severity and duration of the impairment, and expected future performance.

The Hospital's investments in marketable equity securities and mutual funds consist of investments diversified in several different industries. A significant portion of the unrealized losses in the table below were caused by the slowdown of the U.S. economy, particularly during the fourth quarter of 2008. The Hospital evaluated the near-term prospects of the issuer in relation to the severity and duration of impairment. Based upon the evaluation and the Hospital's ability and intent to hold the securities for a reasonable period of time sufficient for a forecasted recovery of fair value, the Hospital does not consider the securities in an unrealized loss position to be other-than-temporarily impaired at December 31, 2008.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(3) Investments, Continued

At December 31, 2008 and 2007, the Hospital investment portfolio has mutual funds, common stocks and real estate investment trust with temporary net unrealized losses of \$4,173,943, \$847,701 and \$241,467, respectively, and an aggregate fair market value of \$15,978,853, \$12,050,154 and \$849,618. The following table presents the gross unrealized losses and fair value of the Hospital's investments with unrealized losses that are not deemed to be other-than-temporarily impaired, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position at December 31, 2008:

<u>Securities</u>	<u>Less than Twelve Months</u>		<u>Twelve Months or Greater</u>		<u>Total</u>	
	<u>Fair value</u>	<u>Unrealized losses</u>	<u>Fair value</u>	<u>Unrealized losses</u>	<u>Fair value</u>	<u>Unrealized losses</u>
Mutual funds	\$ 15,978,853	(4,173,943)	-	-	15,978,853	(4,173,943)
Common stocks	1,426,433	(575,966)	623,721	(271,735)	2,050,154	(847,701)
Real estate investment trust	849,618	(241,467)	-	-	849,618	(241,467)
	<u>\$ 18,254,904</u>	<u>(4,991,376)</u>	<u>623,721</u>	<u>(271,735)</u>	<u>18,878,625</u>	<u>(5,263,111)</u>

(4) Other Revenue

Other revenue consists of the following for the years ended December 31:

	<u>2008</u>	<u>2007</u>
Rent	\$ 744,881	734,076
Affiliate sold services	586,899	549,736
Interest income from affiliates	445,553	827,912
Mohawk Valley Heart Institute	1,859,782	1,747,007
Equity in earnings (losses) of affiliates	167,990	(543,162)
New Hartford Scanner Partnership income	735,416	706,799
Grant revenue	505,971	674,627
EMS education classes	467,045	379,803
CMIC Partnership income	41,718	153,562
School of Radiology tuition	187,277	190,857
VHA partnership equity earnings	294,294	228,930
Managed care incentive income	241,790	300,114
Other	268,046	144,011
	<u>\$ 6,546,662</u>	<u>6,094,272</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(5) Property and Equipment

Property and equipment is comprised of the following at December 31:

	<u>2008</u>	<u>2007</u>
Land and improvements	\$ 5,507,624	5,535,083
Buildings	97,342,016	95,751,393
Fixed equipment	34,071,004	32,572,412
Movable equipment	57,765,698	71,814,019
Equipment under capitalized leases	<u>17,276,870</u>	<u>17,081,738</u>
	211,963,212	222,754,645
Less accumulated depreciation	<u>134,199,988</u>	<u>145,874,967</u>
	77,763,224	76,879,678
Construction-in-progress	<u>7,631,853</u>	<u>4,943,682</u>
Property and equipment, net	<u>\$ 85,395,077</u>	<u>81,823,360</u>

Depreciation expense amounted to approximately \$11.7 million and \$11.3 million for the years ended December 31, 2008 and 2007, respectively. At December 31, 2008, the balance remaining on construction contract commitments approximated \$6.6 million.

(6) Direct Financing Lease

In 2001, Healthcare completed construction of a medical office building with a cost of approximately \$5 million on land owned by an affiliate of Slocum-Dickson Medical Group, P.C. (SDMG). The building is leased to SDMG under a direct financing lease for minimum lease payments of \$45,393 per month through 2022. Healthcare financed 80% of the building cost with a mortgage described in note 7.

The balance sheet presentation of the direct financing lease at December 31 is as follows:

	<u>2008</u>	<u>2007</u>
Minimum lease payments receivable	\$ 7,047,943	7,595,059
Unearned lease income	<u>(2,501,108)</u>	<u>(2,844,145)</u>
Net investment in direct financing lease	4,546,835	4,750,914
Less current portion	<u>547,116</u>	<u>547,116</u>
Long-term net investment in direct financing lease	<u>\$ 3,999,719</u>	<u>4,203,798</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(7) Long-Term Debt and Lease Obligations

Long-term debt consists of the following at December 31:

	<u>2008</u>	<u>2007</u>
Variable rate demand Civic Facility Revenue Bonds (Mohawk Valley Network, Inc. Obligated Group; Faxton-St. Luke's Healthcare)	\$ 19,120,000	19,500,000
Civic Facility Revenue Bonds (Mohawk Valley Network, Inc. Obligated Group; Faxton Hospital Facility)	14,475,000	16,290,000
Civic Facility Revenue Bonds (Mohawk Valley Network, Inc. Obligated Group; St. Luke's-Memorial Hospital Center Facility)	12,100,000	14,165,000
Unamortized premium on Civic Facility Revenue Bonds	141,391	166,303
Mortgage note payable in varying installments at interest rates ranging from 5% to 8% with a balloon payment estimated at \$2.5 million due January 2012, secured by property under direct financing lease (note 6)	3,103,314	3,259,522
Note payable to SLM at a fixed interest rate of 5.95% with a balloon payment estimated at \$1.5 million due February 2011	1,696,618	1,763,200
Note payable in monthly installments of \$16,698 at a fixed rate of 5.25%, collateralized by equipment and maturing March 2008	-	49,674
Note payable in monthly installments of \$2,233 at a fixed rate of 7.25% maturing November 2011	68,443	89,442

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(7) Long-Term Debt and Lease Obligations, Continued

	<u>2008</u>	<u>2007</u>
Note payable in monthly installments of \$10,201 at a fixed rate of 6.55%, maturing February 2012	348,140	443,860
Note payable in monthly installments of \$1,512 at a fixed rate of 6.75%, maturing February 2012	51,421	65,500
Note payable in monthly installments of \$2,366 at a fixed rate of 6.25%, maturing March 2012	83,216	105,528
Note payable in monthly installments of \$3,768 at a fixed rate of 6.34%, maturing November 2012	156,181	190,100
Mortgage payable in monthly installments of \$19,600 at a fixed rate of 6.10%, maturing March 2018	1,701,578	-
Capital lease obligations	<u>11,760,181</u>	<u>9,846,217</u>
	64,805,483	65,934,346
Less current portion:		
Debt	(5,077,471)	(4,685,307)
Capital lease obligations	<u>(3,331,994)</u>	<u>(2,900,138)</u>
Long-term debt, net of current portion	<u>\$ 56,396,018</u>	<u>58,348,901</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(7) Long-Term Debt and Lease Obligations, Continued

Healthcare, through the Oneida County Industrial Development Agency (OCIDA), has issued serial and term Civic Facility Revenue Bonds as follows:

<u>Series</u>	<u>Term</u>	<u>Principal/Mandatory Sinking Fund Payments</u>	<u>Rate</u>
Faxton Hospital Facility:			
1998A - tax-exempt	2013	\$ 555,000 - 675,000	5.000%
1998B - taxable	2013	155,000 - 200,000	6.250%
1999C - tax-exempt	2015	710,000 - 1,035,000	6.00 - 6.625%
1999D - taxable	2015	500,000 - 805,000	7.75 - 8.375%
St. Luke's-Memorial Hospital Center Facility:			
1998A - tax-exempt	2013	\$ 1,060,000 - 1,295,000	5.20%
1998B - tax-exempt	2013	1,035,000 - 1,260,000	5.00%
1998C - taxable	2013	90,000 - 110,000	6.25%
Faxton-St. Luke's Healthcare:			
2006E - tax-exempt	2031	\$ 175,000 - 525,000	4.852 - 4.995%
2006F - taxable	2031	\$ 220,000 - 955,000	4.852 - 4.995%

Beginning in 2008, Healthcare may, at its option, redeem certain of the term bonds maturing after January 1, 2008. The maximum redemption price is 102% of the bond face amount.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(7) Long-Term Debt and Lease Obligations, Continued

The Civic Facility Revenue Bonds are insured and are collateralized by Healthcare's gross receipts (as defined), including all rights to receive such receipts whether in the form of accounts receivable, contract rights or other rights. Healthcare entered into a lease agreement with OCIDA, which also acts as security for payment of the revenue bonds. Additional security is provided by a Master Trust Indenture under which the initial Members of the Obligated Group (Healthcare and MVN) are jointly and severally responsible for payment of the Bonds. The total debt outstanding for the Master Indenture Bonds at December 31, 2008 was \$49,800,000.

The variable rate demand bonds bear interest based on one of three modes - the weekly rate, the term rate, or the fixed rate - for periods selected by the Company. The interest rate for each mode will be the current market interest rate as determined by the remarketing agent of the bonds. The Company used the weekly rate during 2008 and 2007. At December 31, 2008, the bonds carried interest at rates of 3.15% and 1.20%. At December 31, 2007 the bonds carried interest at rates of 4.38% and 2.99%.

The variable rate demand bonds are remarketed by a remarketing agent in accordance with the terms of a remarketing agreement. The bonds will be remarketed whenever a new interest rate is in effect. If the bonds cannot be remarketed, they would be due and payable under the terms of the remarketing agreement; however, the Company can draw on a letter of credit with a bank in the amount of the then outstanding balance. Any amounts drawn on the letter of credit are due upon the expiration date of the letter of credit, which is currently June 25, 2013.

Various agreements relating to the revenue bonds establish covenants with which Healthcare has agreed to comply, including the following, among others. In any year, Healthcare will not dispose of operating assets exceeding 2.5% of the total book value of operating assets or accounts receivable with recourse having a book value in excess of 50% of the total book value of accounts receivable. The Obligated Group may not merge or consolidate with another entity unless certain conditions are met. Additional indebtedness is limited to certain provisions including borrowings not to exceed 15% of total operating revenue. The Obligated Group agreed to maintain a minimum debt service coverage ratio, as defined, of 120% annually. At December 31, 2008, the Obligated Group was in compliance with the covenants that are considered events of default.

At December 31, 2008, the Company had a \$17,500,000 line of credit with a bank, collateralized by substantially all of the Company's investments. The line of credit is available through June 2009. A portion of the line was reserved for four letters of credit totaling approximately \$7,324,000 related to self-insured liabilities. The line contains financial covenants including a debt service coverage ratio requirement, a day's cash on hand requirement and a minimum unrestricted liquidity to funded debt ratio. There was no outstanding balance at December 31, 2008 and 2007.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(7) Long-Term Debt and Lease Obligations, Continued

Healthcare leases certain equipment under capital leases. Healthcare also leases equipment and facilities under non-cancelable operating leases, including leases with related parties. The net book value of the equipment capitalized under lease agreements at December 31, 2008 and 2007 amounted to approximately \$12,327,900 and \$10,956,000, respectively.

Scheduled principal payments on long-term debt and payments under non-cancelable operating leases and the present value of future minimum capital lease payments at December 31, 2008 are:

	<u>Long-term debt</u>	<u>Capital leases</u>	<u>Operating leases</u>	
			<u>Related party</u>	<u>Other</u>
Years ended December 31:				
2009	\$ 5,077,471	3,892,937	427,566	703,908
2010	5,387,012	3,525,381	427,566	491,024
2011	7,151,976	2,891,802	427,566	367,976
2012	5,768,061	1,475,756	427,566	304,670
2013	6,037,925	1,113,450	427,566	304,670
Thereafter	<u>23,622,857</u>	<u>116,028</u>		
Total payments	53,045,302	13,015,354		
Less amounts representing interest (at rates varying from approximately 3.31% to 12.12%)		<u>1,255,173</u>		
Present value of capital lease obligations		11,760,181		
Less current portion		<u>3,331,994</u>		
Capital lease obligations, net of current portion		<u>\$ 8,428,187</u>		

Rent expense under operating leases amounted to approximately \$1,629,000 in 2008 and \$1,411,000 in 2007.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(7) Long-Term Debt and Lease Obligations, Continued

As a result of the aforementioned bond issuances, Healthcare has entered into two interest rate swap contracts to reduce its risk of exposure to changes in interest rates. The interest rate swaps effectively convert the variable rate of the 2006 bonds to fixed rates of 5.938% and 4.216% through June 2031. The swaps have been designated as cash flow hedges of the variable interest rate and are recorded at fair value as a liability of \$6,373,560 on the accompanying consolidated balance sheet as of December 31, 2008. The swaps have effective dates of June 26, 2006 and termination dates of June 1, 2031. The amounts exchanged are based on the notional amounts whereby Healthcare pays the swap counter-party interest at a fixed rate (4.216% - tax-exempt, 5.938% - taxable) and the swap counter-party pays Healthcare a variable rate (based on 70% of 1 month LIBOR tax-exempt, BMA Rate - taxable). The notional amounts and fair values based on quoted market prices, of Healthcare's interest rate swaps are as follows at December 31, 2008:

	<u>Notional amount</u>	<u>Asset (liability) market value</u>
Healthcare - Series E	\$ 7,340,000	(1,922,903)
Healthcare - Series F	11,780,000	<u>(4,450,657)</u>
		<u>\$ (6,373,560)</u>

The mark-to-market adjustments resulted in a decrease in unrestricted net assets of \$4,219,720 for the year ended December 31, 2008. Changes in value of the swaps determined to arise from ineffectiveness of the instruments, as determined through the hypothetical derivative method, are recorded as a component of interest expense in the consolidated statements of operations and changes in net assets. For the year ended December 31, 2008, there was no significant ineffectiveness. Healthcare expects that the loss existing in unrestricted net assets to be reclassified into income from operations within the next 12 months will not be significant.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(8) Temporarily and Permanently Restricted Net Assets

Temporarily restricted net assets are available for the following purposes at December 31:

	<u>2008</u>	<u>2007</u>
Renovations	\$ 500,000	-
Continuous Learning Center	238,924	-
Purchase of equipment	-	205,686
Capital improvements	27,335	221,314
Scholarship assistance	30,417	30,565
Specific program	<u>1,008,834</u>	<u>879,311</u>
	<u>\$ 1,805,510</u>	<u>1,336,876</u>

Permanently restricted net assets at December 31 are restricted to:

	<u>2008</u>	<u>2007</u>
Investments to be held in perpetuity, the income from which is to support charity care, health care services, scholarships and facility maintenance	<u>\$ 4,528,164</u>	<u>4,528,164</u>

(9) Pension Plans

Healthcare sponsors a 401(k) plan that covers substantially all full-time non-union employees. Healthcare contributes 5% of eligible compensation to the plan (4% for employees hired after December 1, 2001). Healthcare also makes a matching contribution up to 100% of the first 4% of employee contributions to the 401(k) plan. Healthcare also sponsors a 403(b) plan that covers union and certain other employees. Healthcare contributes 5% to 7% of eligible compensation to the 403(b) plan.

Pension expense under all plans aggregated approximately \$5,560,000 in 2008 and approximately \$5,065,000 in 2007.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(10) Estimated Medical Malpractice and General Liability Costs

Effective March 15, 2004, Healthcare is insured for medical malpractice risks through claims-made professional liability insurance. Should the annual claims-made policy not be renewed or replaced with equivalent insurance, claims based on incidents during its term, but reported subsequently, will be uninsured. No accrual for possible losses attributable to incidents that may have occurred but that have not been reported has been made because the amount is not reasonably estimable. Prior to that date, Healthcare maintained occurrence-based medical malpractice and general liability insurance coverage.

Healthcare is a defendant in various malpractice and general liability claims. The ultimate outcome of such litigation cannot be determined at this time. However, management believes the final disposition of these claims will not have a material effect on the financial position or results of operations of Healthcare.

Healthcare and certain of its affiliates are primarily self-insured for employee workers' compensation and disability claims. Self-insured liabilities are based on claims filed and estimates for claims incurred but not reported. As required by the State of New York Workers' Compensation Board, Healthcare has purchased letters of credit to guarantee payment of workers' compensation claims. Stop loss insurance for losses exceeding certain amounts has been purchased for workers' compensation. Each affiliate is jointly and severally liable for the satisfaction of all obligations. These liabilities are recorded at discounted amounts using a 7% interest rate.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(11) Affiliated Entities

The following represents summarized financial information from the financial statements of Healthcare's affiliates that are included in the accompanying financial statements on the equity method of accounting.

<u>2008</u>	<u>Foundation</u>	<u>SLM</u>	<u>Faxchil - consolidated</u>
Total assets	\$ 5,825,433	6,525,441	15,744,573
Total liabilities	<u>106,094</u>	<u>6,529,033</u>	<u>15,948,083</u>
Net assets (deficiency)	\$ <u>5,719,339</u>	<u>(3,592)</u>	<u>(203,510)</u>
Total revenue	\$ <u>454,362</u>	<u>1,301,488</u>	<u>42,203,205</u>
Total expenses	\$ <u>(1,849,327)</u>	<u>(1,335,036)</u>	<u>41,784,856</u>
Excess (deficiency) of revenue over expenses and changes in net assets	\$ <u>(1,394,965)</u>	<u>(33,548)</u>	<u>418,349</u>
<u>2007</u>	<u>Foundation</u>	<u>SLM</u>	<u>Faxchil - consolidated</u>
Total assets	\$ 7,027,144	6,659,389	17,678,411
Total liabilities	<u>381,622</u>	<u>6,412,621</u>	<u>18,456,691</u>
Net assets	\$ <u>6,645,522</u>	<u>246,768</u>	<u>(778,280)</u>
Total revenue	3,223,989	1,302,825	40,374,295
Total expenses	<u>(3,020,725)</u>	<u>(1,316,528)</u>	<u>(40,715,727)</u>
Excess of revenue over expenses and changes in net assets	\$ <u>203,264</u>	<u>(13,703)</u>	<u>(341,432)</u>

The following are approximate dollar amounts of significant transactions and balances with affiliated entities.

Contributions from the Foundation to Healthcare amounted to approximately \$1,080,000 and \$1,760,000 in 2008 and 2007, respectively.

SLM Corporation, which is included on the equity method, is a for-profit real estate company whose stock is owned by a trust, of which Healthcare is the sole beneficiary. Healthcare rents space from SLM and provides utilities and maintenance services to SLM. Rent totaled approximately \$77,000 for 2008 and 2007 and services sold totaled approximately \$679,000 and \$642,000 in 2008 and 2007, respectively.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(11) Affiliated Entities, Continued

Included in supplies and other expenses are clinical laboratory services provided by Centrex to Healthcare of approximately \$10,864,000 and \$9,272,000 in 2008 and 2007, respectively.

Net receivables (payables) at December 31 from the following affiliates were approximately:

	<u>2008</u>	<u>2007</u>
Home	\$ 868,000	1,078,000
New Hartford Scanner Associates	605,000	628,000
MVN	1,562,000	803,000
Other	<u>(213,000)</u>	<u>696,000</u>
	<u>\$ 2,822,000</u>	<u>3,205,000</u>

New Hartford Scanner Associates (NHTSA) is a joint venture between Healthcare and several radiologists to provide CT scan services. Healthcare receives income from NHTSA, which amounted to approximately \$736,000 and \$707,000 in 2008 and 2007, respectively. Healthcare also provides payroll services to NHTSA.

In addition to the foregoing, Healthcare, through its affiliation with MVN, is affiliated with several other entities all of which are independent from Healthcare and are engaged in serving the Mohawk Valley area as providers of various healthcare related services.

(12) Statements of Cash Flows - Supplemental Disclosures

Healthcare's non-cash investing and financing activity and cash payments for interest for the years ended December 31 were as follows:

	<u>2008</u>	<u>2007</u>
Non-cash investing and financing activity - capital		
lease obligations issued for property and equipment	\$ 4,813,913	3,018,099
Cash paid for interest	3,925,853	3,901,202

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(13) Functional Expenses

Healthcare provides general health care services to residents of the Greater Utica area. Expenses related to providing these services are as follows:

	<u>2008</u>	<u>2007</u>
Health care services	\$ 219,868,997	200,629,435
General and administrative	<u>33,025,108</u>	<u>29,003,202</u>
	<u>\$ 252,894,105</u>	<u>229,632,637</u>

(14) Fair Value of Financial Instruments

The following methods and assumptions were used by Healthcare in estimating the fair value of its financial instruments:

Cash and Cash Equivalents: The amount reported on the balance sheet for cash and cash equivalents approximates fair value.

Investments including Assets Limited as to Use: The fair values, which are the amounts reported on the balance sheets, are based on quoted market prices, if available, or estimated using quoted market prices for similar securities.

Estimated Third-Party Payor Settlements: The amount reported on the balance sheet for estimated third-party payor settlements approximates its fair value.

Long-Term Debt: The fair value of fixed rate issues was determined by price quotes from an investment banker or estimated using discounted cash flow analysis, based on the current incremental borrowing rate of similar types of borrowing arrangements. The fair value of variable rate debt approximates its reported value on the balance sheet. Fixed rate long-term debt is the only financial instrument with a difference between recorded and fair value. The recorded value of fixed rate long-term debt on the balance sheet at December 31, 2008 was approximately \$30,681,000 and the estimated fair value was approximately \$31,376,000.

In September 2006, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 157, "Fair Value Measurements" (SFAS 157). SFAS 157 provides a new definition for fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. The Hospital adopted the provisions of SFAS 157 as of January 1, 2008 for financial assets and liabilities that are re-measured and reported at fair value each reporting period. The financial assets recorded at fair value on a recurring basis consist of cash and cash equivalents, short and long-term investments, and assets limited as to use. Financial liabilities recorded at fair value on a recurring basis consist of interest rate swaps. The adoption of SFAS 157 did not have any impact on the Hospital's financial results.

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(14) Fair Value of Financial Instruments, Continued

In accordance with the provisions of FASB Staff Position No. 157-2, "Effective Date of FASB Statement No. 157," the Hospital has elected to defer implementation of SFAS 157 as it relates to non-financial assets and non-financial liabilities that are not permitted or required to be measured at fair value on a recurring basis. The Hospital is evaluating the impact, if any, SFAS 157 will have on those non-financial assets and liabilities.

Even though the adoption of SFAS 157 did not impact the financial condition, results of operations or cash flows, the Hospital is now required to provide additional disclosures under SFAS 157. The following tables present information about assets and liabilities and are measured at fair value on a recurring basis as of December 31 and indicate the fair value hierarchy of the valuation techniques utilized to determine such fair value. In general, fair values determined by Level 1 inputs utilize quoted prices in active markets for identical assets or liabilities. The Hospital considers a security that trades at least weekly to have an active market. Fair values determined by Level 2 inputs utilize data points that are observable, such as quoted prices, interest rates and yield curves. Fair values determined by Level 3 inputs are unobservable data points for the asset or liability, and include situations where there is little, if any, market activity for the asset or liability.

		<u>Fair value measurements at December 31, 2008</u>			
		Carrying amount at December 31, <u>2008</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Assets:					
Cash equivalents	\$	2,039,780	2,039,780	-	-
Investments		19,924,953	19,075,335	849,618	-
Assets limited as to use		<u>8,797,096</u>	<u>6,046,269</u>	<u>2,750,827</u>	<u>-</u>
Total	\$	<u>30,761,829</u>	<u>27,161,384</u>	<u>3,600,445</u>	<u>-</u>
Liabilities:					
Interest rate swaps		<u>(6,373,560)</u>	<u>-</u>	<u>(6,373,560)</u>	<u>-</u>
Total	\$	<u>(6,373,560)</u>	<u>-</u>	<u>(6,373,560)</u>	<u>-</u>

FAXTON-ST. LUKE'S HEALTHCARE AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(14) Fair Value of Financial Instruments, Continued

	Carrying amount at December 31, <u>2007</u>	<u>Fair value measurements at December 31, 2007</u>		
		<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Assets:				
Cash equivalents	\$ 1,476,753	1,476,753	-	-
Investments	25,102,673	24,121,069	981,604	-
Assets limited as to use	<u>9,773,586</u>	<u>8,422,967</u>	<u>1,350,619</u>	<u>-</u>
Total	\$ <u>36,353,012</u>	<u>34,020,789</u>	<u>2,332,223</u>	<u>-</u>
Liabilities:				
Interest rate swap	<u>(2,153,840)</u>	<u>-</u>	<u>(2,153,840)</u>	<u>-</u>
Total	\$ <u>(2,153,840)</u>	<u>-</u>	<u>(2,153,840)</u>	<u>-</u>

FSLH

2008 ASC Endoscopy Volume by CBSA

Calculation of Procedures per 1,000 Population

Data Per HANYS /SPARCS Database

CBSA	2008 Total	Population	Actual Rate per 1K Pop	Predicted (1) Procedure Volume	Predicted (1) Rate per 1K Pop	Variance Actual vs Predicted
Utica-Rome, NY	15,881	296,714	53.52	10,187	34.33	19.19
Binghamton, NY	8,586	246,316	34.86	8,592	34.88	-0.02
Buffalo-Niagara Falls, NY	34,897	1,128,032	30.94	38,767	34.37	-3.43
Albany-Schenectady-Troy	26,212	856,008	30.62	28,372	33.14	-2.52
Rochester, NY	21,689	1,033,120	20.99	34,225	33.13	-12.13
Syracuse, NY	8,122	649,070	12.51	21,285	32.79	-20.28
Total	115,387	4,209,260	27.41	141,428	33.60	-6.19

(1) Predicted Endoscopy Outpatient Procedures based upon HANYS proprietary model (Outpatient Forecaster 2.10) that utilizes standard age/sex adjusted use rates applied to population set.

Area: Upstate NY ASU Selected County Study Area

Selected CPT Procedure Product Lines: Colonoscopy, Sigmoidoscopy

Data Source: NYS HCPCS/CPT Procedure Product line (2009) HANYS w Sigmoid & Colonoscopies

Data Source: Outpatient ST 01/01/2008 - 12/31/2008

County	Procedures Colonoscopy	Procedures Sigmoidoscopy	Procedures Combined	Population	Procedures Per 1,000 Population
Herkimer	2,899	35	2,934	60,429	48.55
Oneida	10,938	127	11,065	238,233	46.45
Broome	7,563	158	7,721	200,397	38.53
Erie	34,383	778	35,161	914,615	38.44
Lewis	869	7	876	24,738	35.41
Madison	2,527	37	2,564	74,029	34.64
Albany	9,411	60	9,471	277,386	34.14
Monroe	18,625	388	19,013	728,987	26.08
Chenango	1,223	30	1,253	50,367	24.88
Onondaga	7,155	137	7,292	455,748	16.00
Total	95,593	1,757	97,350	3,024,929	32.18
DDM Specified Five County Area (Oneida, Herkimer, Madison, Lewis & Chenango)					41.74
Other Selected UpState NY Counties (Broome, Erie, Albany, Monroe & Onondaga)					30.52

Selected CPT Procedure Product Lines: Colonoscopy, Sigmoidoscopy
 Data Source: NYS HCPCS/CPT Procedure Product line (2009) HANYS w Sigmoid & Colonoscopies
 Data Source: Outpatient ST 01/01/2008 - 12/31/2008
 For DDM Specified Five County Area
 Sorted by DDM % of Total (Market Share)

County	Colonoscopy			Sigmoidoscopy			Combined		
	DDM	Tot	%DDM	DDM	Tot	%DDM	DDM	Tot	%DDM
Oneida	6098	10938	55.75%	47	127	37.01%	6145	11065	55.54%
Herkimer	1370	2899	47.26%	12	35	34.29%	1382	2934	47.10%
Madison	949	2527	37.55%	0	37	0.00%	949	2564	37.01%
Lewis	149	869	17.15%	0	7	0.00%	149	876	17.01%
Chenango	12	1223	0.98%	0	30	0.00%	12	1253	0.96%
	8578	18456	46.48%	59	236	25.00%	8637	18692	46.21%

Analysis of outreach to underserved populations:

DDM Self Pay, Medicaid
 & Medicaid HMO Procedures (of the 8,637 combined DDM five County volume)

DDM % **3.18%**

UpState NY Ten County Self Pay, Medicaid & Medicaid HMO Procedures (of the 97,350 total volume for all physicians)

Volume 10,074

Overall % **10.35%**



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

March 4, 2010

Ms. Ann Gormley
Consultant
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

RE: 092142 B
Mohawk Valley EC, LLC
(Oneida)
Establish and construct a single specialty
ambulatory surgery center providing
endoscopy services, at 116 Business Park
Drive, Utica

Dear Ms. Gormley:

Review of the above application has revealed the need for the additional information requested in the enclosure from the Bureau of Architectural and Engineering Facility Planning. In preparing answers to the questions, please repeat each question and then provide the answer. Please submit your response within 30 days of the date of this letter in accordance with 10 NYCRR 710.3(a), as follows:

1. An original and eight (8) copies of your response to the Bureau of Project Management, New York State Department of Health, Hedley Park Place, 6th Floor, 433 River Street, Troy, New York, 12180-2299. Drawings should not be sent to Project Management.
2. One copy, including all drawings associated with this project, to the Bureau of Architectural and Engineering Facility Planning, New York State Department of Health, Hedley Park Place, 6th. Floor, 433 River Street, Troy, New York 12180-2299.

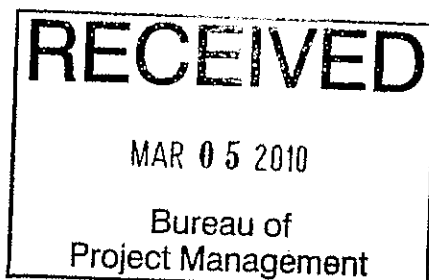
Processing of your application by the Bureau of Architectural and Engineering Facility Planning cannot be completed until the information is received and reviewed. Also, if this project requires review by the State Hospital Review and Planning Council, such review may have to be delayed if the requested information is not received promptly. Accordingly, you are encouraged to submit the response at your earliest opportunity. In this regard, be advised that a single faxed response to this request does not constitute a full and complete response.

If you have any questions on the information being requested, please contact the individual identified on the enclosure.

Sincerely,

Robert Woods, R.A.

Robert Woods, R.A.
Bureau of Architectural & Engineering
Facility Planning



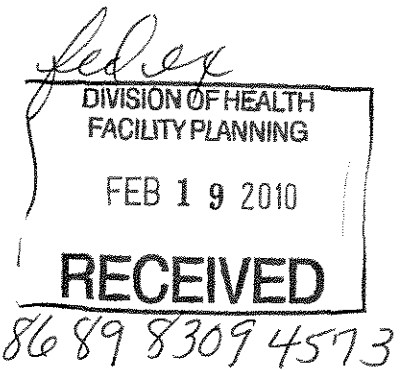
Project No.: 092142
Facility: Mohawk Valley EC, LLC

The following has been prepared by the Bureau of Architectural and Engineering Facility Planning:

Robert Woods, R.A.
Phone: 518-402-0904

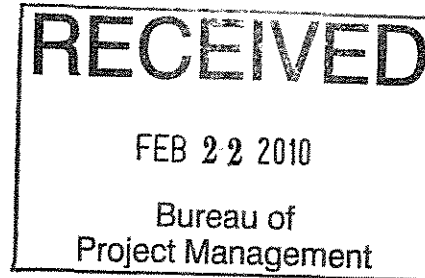
The following information is required to complete the review of the above referenced application.

1. 1997 NFPA 101: 6-2.4.2: "Openings through floors, such as stairways, hoistways for elevators, dumbwaiters, inclined and vertical conveyors; shaftways used for light, ventilation, or building services; or expansion joints and seismic joints used to allow structural movements, shall be enclosed with fire barrier walls. Such enclosures shall be continuous from floor to floor or floor to roof. Openings shall be protected as appropriate for the fire resistance rating of the barrier." The proposed plans indicate an unprotected vertical opening at the entrance lobby. Please reconfigure the vertical opening so that it is in compliance with the above cited regulation.



February 18, 2010

New York State Department of Health
Bureau of Project Management
433 River Street, 6th Floor
Troy, NY 12180-2299
Attn: Mr. Christopher Delker
Health Program Administrator IV
Division of Health Facility Planning



RE: CON # 092142 Mohawk Valley EC, LLC

Dear Mr. Delker:

Pursuant to your request for more information regarding the above mentioned application, please see the responses below.

1. **Is it expected that the utilization projected in your application will meet an unmet need in your community, or will your facility provide ambulatory surgery service to clientele who is generally served by existing ambulatory surgery providers?**
 - We will be meeting an unmet need focusing on a five county region around Utica where the proposed facility would be located. Our proposed facility would provide outpatient surgical capacity which would complement, not replace, the facilities at Faxton-St. Luke's, St. Elizabeth Hospital and Oneida Hospital. Digestive Disease Medicine of Central New York, LLP (DDM) physicians would continue to perform outpatient endoscopies at the three hospitals. Physicians who currently rotate among the hospitals would add Mohawk Valley Endoscopy Center to that rotation.
2. **If your facility is expected primarily to meet an unmet need in the community, what data support the existence of the unmet need?**
 - Our facility will be owned by the physicians of Digestive Disease Medicine of Central New York, LLP who also will be the users of the facility. DDM currently is handling the patient volume of a nine physician GI practice with seven physicians. As a result, there is a 10 to 14 week wait for endoscopy procedures with approximately 500 patients waiting each

week. We estimate a current backlog of around 5,000 to 7,000 outpatient procedures

- In addition to the patient backlog noted above, DDM anticipates significant growth in screening colonoscopies and other outpatient endoscopic procedures based on the area's aging population and the focus by payers and providers on preventive medicine. Once DDM hires the additional physicians discussed below, it will be in a position to increase its activities in its current primary market area as well as in adjacent, underserved counties.
- DDM's physician practice has not had an opportunity to meet the service needs of adjacent counties such as Lewis and Chenango because the physicians are currently overextended serving patients from the three core counties they serve (Oneida, Herkimer and Madison). According to data from the Expanded Behavioral Risk Factor Surveillance System (BRESS) Report: July 2008 – June 2009 (Age Adjusted), in counties outside New York City 66.30 percent of adults aged 50 and older reported having a sigmoidoscopy or colonoscopy within the past 10 years. The chart below shows the results for the five county area around Utica where DDM's proposed facility will be located.

Percent of Adults Aged 50 and Older Having a Sigmoidoscopy or Colonoscopy within the Past 10 Years (Age Adjusted)

<i>County</i>	<i>Percent</i>
Oneida	66.2
Chenango	51.3
Herkimer	59.8
Lewis	45.8
Madison	69.6
New York State Outside NYC	66.3

- These data clearly demonstrate that outside two of the counties DDM primarily serves (Oneida and Madison), the population is well below the county average for colorectal cancer screening outside New York City. The addition of the proposed endoscopy center and the recruitment of additional gastroenterologists will allow DDM to focus efforts on expanding



screenings of residents from not only these three counties but the entire five county region.

In other Upstate counties where freestanding endoscopy centers exist, the percentage of adults aged 50 and older being screened is higher than in Oneida County (Albany County – 69.2 percent; Onondaga County (69.9 percent); and Saratoga County (68.20).

- The Behavioral Risk Factor Surveillance System (BRFSS Brief Number 0801) entitled Colorectal Cancer Screening – New York State Adults 2006 contained the following statements:
 - Colorectal cancer screening by either a fecal test or a colonoscopy or sigmoidoscopy has increased by 20% in New York State since 2001. Despite this improvement in the recommendation that all men and women 50 years and older be screened, only 64% of New Yorkers report being screened for colorectal cancer.
 - While the incidence of colorectal cancer and its associated mortality have declined in recent years, further reductions could be achieved by increasing the percent of men and women aged 50 and older screened appropriately for colorectal cancer.
 - Improving access to colorectal cancer screening for all New Yorkers and promoting screening among underserved groups will help continue to reduce the burden of colorectal cancer on New York State.

Approval of DDM's freestanding endoscopy center and the accompanying expansion of its team of gastroenterologists will help New York State achieve its goal of expanding colorectal cancer screenings in the Utica area and nearby counties.

- The primary population targeted for colorectal screening (ages 50 -75) is projected to increase by 9,103 (7.4 percent) in the five county area which DDM's proposed facility will primarily serve. Even with no improvement in the 66.3 percent rate of screenings for counties outside New York City, by 2020 an additional 6,035 colorectal screenings would need to be performed. Furthermore, to bring Chenango, Lewis and Herkimer County up to the 66.3 percent figure, based upon the 2010 projected population for these counties, 4,956 colorectal screenings will need to be performed.



POPULATION PROJECTIONS

BY COUNTY

Age 50-74

2010 - 2020

<i>County</i>	<i>2010</i>	<i>2020</i>	<i>Change</i>	<i>Percent</i>
Chenango	15,199	16,200	1,001	6.6
Herkimer	18,331	19,412	1,081	5.9
Lewis	7,242	7,920	678	9.4
Madison	19,280	21,218	1,938	10.1
Oneida	63,183	67,588	4,405	7.0
<i>Total</i>	<i>123,235</i>	<i>132,338</i>	<i>9,103</i>	<i>7.4</i>

Source: Cornell University Program on Applied Demographics New York State and County Population Projections by Age and Sex - Preliminary Population Projections by Age and Sex, New York State and 62 Counties, 2005-2035.

- Oneida County, the primary county served by DDM, lags behind other Upstate Urban counties such as Albany and Onondaga in the percent of adults aged 50 and older having a sigmoidoscopy or colonoscopy within the past 10 years. These data are presented below.

***Percent of Adults Aged 50 and Older
Having a Sigmoidoscopy or Colonoscopy Within
the Past 10 Years
(Age Adjusted)
By County***

<i>County</i>	<i>Percent</i>
Albany	69.2
Onondaga	69.9
Oneida	66.2



If Oneida County were to increase its percentage of those screened by three percent, 1,895 additional screenings would need to be performed.

- To summarize, the data presented above indicate that three counties to which DDM proposes to provide expanded services are currently underserved; demographic trends indicate that the need for colorectal screenings will increase between 2010 and 2020; Oneida County lags behind Onondaga and Albany County in the percentage of population receiving colorectal screenings and needs to expand its capabilities; and, finally, only 64% of New Yorkers are screened appropriately for colorectal cancer leading to the need to increase access to colorectal cancer screening to reduce the burden of colorectal cancer on New York State.
 - DDM plans to hire at least three new gastroenterologists over the next 24 months to accommodate its current patient volume and anticipated growth. It is recruiting nationally and has retained a search firm to assist with its recruitment efforts. DDM anticipates adding two new physicians within the next 12 months.
 - DDM's seven physicians currently perform about 20,000 outpatient procedures per year. Each physician added to the practice will increase DDM's annual outpatient surgical volume by 2,000 to 3,000 procedures.
 - There is not sufficient outpatient surgical capacity to handle the new DDM physicians and the additional surgical volume generated by them. Faxton-St. Luke's and St. Elizabeth Hospital cannot accommodate additional DDM physicians without expanding their facilities. Although both hospitals have offered to build additional procedure rooms, DDM has opted, for the reasons described in our CON application, to provide that additional capacity through the establishment of a four procedure room single- specialty endoscopy facility.
- 3. If your facility is expected primarily to provide service to a clientele now served by existing providers, why would future patients use your facility instead of existing facilities?**

There is a limited capacity with current providers to provide the services needed by these patients. This is reflected in the waiting period our patients are currently experiencing to have a procedure completed. Our facility will help meet the need for the provision of these services in a more timely manner which will lead to greater patient satisfaction and improved health outcomes. Experience has shown that in other Upstate metropolitan areas, such as Schenectady, the approval of freestanding endoscopy centers has resulted in reduced waiting times and high levels of patient satisfaction.



- 4. From where will employees of your facility be recruited? (For example, local hospitals, private physician practices, accredited schools, training programs).**

Employees will be recruited from accredited schools and training programs, as well as through advertisements in local newspapers and professional publications. Since DDM's physicians will continue to perform a substantial number of procedures at the three local hospitals, no direct solicitation of hospital employees will occur. In addition, the facility may hire some of its nursing staff from DDM.

- 5. What steps will your facility take to retain skilled staff to counter high staff turnover found in many health care facilities?**

We will maintain good human resource and communication systems within our organization to ensure that employee needs are attended to as appropriate. In addition, we will offer competitive wages and above average benefits to maintain good employees. Employees will be evaluated regularly and provided incentives for good performance. We believe that the staff will enjoy working in a spacious, state of the art endoscopy facility and this will add to our ability to retain skilled staff.

- 6. How many of the procedures you project for your proposed facility are currently performed in an office setting (office-based surgery)?**

None

If you need further information, please contact me at (518) 583-4900 at your earliest convenience. At your request, this information has also been provided directly to: Oneida Healthcare Center, Faxton-St. Luke's Healthcare and St. Elizabeth Medical Center.

Sincerely,



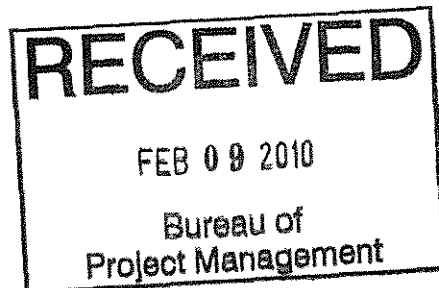
Ann M. Gormley
Consultant

Cc: Mr. Gene Morreale
Mr. Scott H. Perra
Sr. Johanna DeLelys



February 5, 2010

Mr. Jeffrey Rothman, Director
Information and Technology Services Group
New York State Department of Health
Hedley Park Place, 6th Floor
433 River Street
Troy, NY 12180-2299



RE: CON# 092142 – Mohawk Valley EC, LLC

Dear Mr. Rothman:

We are responding to the questions raised by the Bureau of Financial Analysis regarding the above referenced Certificate of Need application.

1. Please indicate the start and completion dates of Construction on Schedule 8B.

Attached is a revised Schedule 8B with the construction dates added.

2. Please update your letter of interest for the equipment loan, the amount shown on Line E of Schedule 9-I is \$1,476,861 and the letter of interest is for \$1,080,000. Also, please complete Schedule 9 C, Terms of Proposed Financing. Additionally, it is preferable if the loan has a fixed rate and maintains a life consistent with the equipment's.

Attached is a revised Schedule 9 and a revised letter of interest from the bank.

3. Schedule 5, Working Capital Financing, indicates that 50% or \$253,203 will be borrowed through a letter of credit at approximately 6.75%. It is preferred that loans for working capital have a 3 to 5-year term and be self-amortizing loan with a fixed rate. Please revise the letter of interest.

Attached is a revised letter of interest from the bank as requested.

4. According to Schedule 3B-III.A Representative Governance-Ownership, the landlord's and applicant's members are the same and furthermore, the lease states the landlord will construct the ambulatory surgery center at its sole cost and expense.

- **What is the landlord's estimated cost to construct the proposed ambulatory surgery center? Based upon the letter of interest, the**

71316

construction cost appears to be in the range of \$3.6 to \$4.0 million while the real estate letters use an estimate of \$2.3 million.

The landlord estimates that the cost of construction will be approximately \$2.369 million. The bank's \$3,681,000 letter of interest includes financing up to 90% of the acquisition cost of the building (\$1.75 million) and up to 90% of the ASC build-out costs. Approximately \$1,575,000 of the \$3,681,000 would be used to finance the purchase of the building (90% of \$1.75 million) and approximately \$2,035,000 would be used to finance the ASC build-out costs (90% of \$2.26 million).

➤ **How much of the landlord's rent (\$480,312 per year or \$42 per square feet) is allocated to amortizing the landlord's loan?**

Approximately \$29 per square foot is allocated to amortizing the landlord's loan. The ASC will occupy 50% of the building. The ASC rent is intended to cover roughly one-half of debt service associated with the building acquisition and 100% of debt service associated with the ASC build-out. In addition, property taxes represent an additional \$4.00+/- per square foot, building operating costs represents an additional \$3.00+/- per square foot and a return on the landlord's equity investment in the building and ASC build-out, including soft costs, represents an additional \$6.00+/- per square foot.

➤ **What contingencies or assurance are in place to address the landlord's balloon obligation at the end of five (5) years?**

The bank letter of interest has been revised to provide a 10 year term with a 15 year amortization. Assuming that the bank finances \$3,681,000 at 6.75% the balloon at the end of 10 years would be \$1,654,867. It would be the intention of all parties – including the bank – that the balloon be refinanced over an appropriate term. The members of the landlord will be required to personally guaranty the loan. Therefore, upon the maturity – or acceleration in the case of a default – the individual members would be responsible for repaying the loan if the landlord were unable to refinance the balloon. Because the loan-to-value at that time would at least 40% (the current letter of interest requires a loan-to-value of 90%), there should be little problem in refinancing the balloon.

5. Please update Schedule 13D, Annual Operating Revenue for Charity Care. Note the Department has a policy that at least 2% of the total visits are for Charity Care.

Attached is an updated Schedule 13D and Attachment 15 reflecting at least 2% Charity Care. Also, attached is an updated Schedule 17E and Attachment 14- Monthly Revenues, Expenditures and Cash Flow for Year 1.



- 6. Please provide analysis showing how the Medicare and Medicaid rates were calculated by categorizing each procedure type into the appropriate category and applying the regional adjusted rate to the volume projections. Please state if these projections take into consideration New York State's new rate methodology, Ambulatory Patient Groups (APG) and any reductions to Medicare reimbursements.**

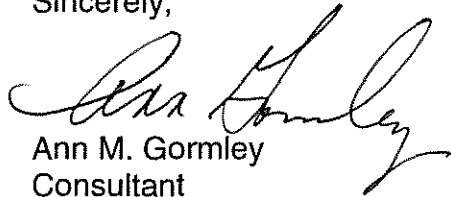
Please see the attached analysis for the calculation of Medicare and Medicaid rates. The projections are based on current APG and Medicare (APC) reimbursement systems.

- 7. Please provide a breakeven analysis for the 1st and 3rd years.**

Attached is a breakeven analysis for the 1st and 3rd years.

If any further information is required, please contact me at your earliest convenience at (518) 583-4900. Thank you for your assistance with this application.

Sincerely,



Ann M. Gormley
Consultant



Certificate of Need Application

Schedule 8B - Total Project Cost - For Projects with up to 8 Subprojects

For Article 28, 36, and 40 Establishment & Construction Requiring Full, Administrative or Limited Review *
 For Limited Review, complete column C only.

Constants:	Value	Comments:
Design Contingency - New Construction as %		Normally 10%
Construction Contingency - New Construction as %		Normally 10%
Design Contingency - Renovation work as %	10.00%	Normally 10%
Construction Contingency - Renovation work as %	10.00%	Normally 10%
Construction Start Date:	06/01/10	as mm/dd/yy
Midpoint of Construction Date	08/15/10	as mm/dd/yy
Completion of Construction Date	10/31/10	as mm/dd/yy
Year used to compute Current Dollars:	2009	

Subject of attachment:	Attachment Number	Filename of attachment - PDF
For new construction and addition, at the schematic stage the design contingency will be normally be 10% and the construction contingency will be 5%. If percentages are otherwise, please explain in an attachment.	n/a	
For renovation, the design contingency will normally be 10% and the construction contingency 10%. If percentages are otherwise, please explain in an attachment	n/a	

Certificate of Need Application
Schedule 8B - Total Project Cost - For Projects with up to 8 Subprojects

Item	A Project Cost in	B Escalation amount to	C Estimated Project
Source:	Schedule 10 Col .7	Computed by applicant	(A + B)
1.1 Land Acquisition	\$0		\$0
1.2 Building Acquisition	\$0		\$0
2.1 New Construction	\$0	\$0	\$0
2.2 Renovation & Demolition	\$0	\$0	\$0
2.3 Site Development	\$0	\$0	\$0
2.4 Temporary Utilities	\$0	\$0	\$0
2.5 Asbestos Abatement or Removal	\$0	\$0	\$0
3.1 Design Contingency	\$0	\$0	\$0
3.2 Construction Contingency	\$0	\$0	\$0
4.1 Fixed Equipment (NIC)	\$0	\$0	\$0
4.2 Planning Consultant Fees	\$40,000	\$0	\$40,000
4.3 Architect/Engineering Fees	\$0	\$0	\$0
4.4 Construction Manager Fees	\$0	\$0	\$0
4.5 Other Fees (Consultant, etc.)	\$0	\$0	\$0
Subtotal (Total 1.1 thru 4.5)	\$40,000	\$0	\$40,000
5.1 Movable Equipment (Sched 11)	\$1,589,992	\$0	\$1,589,992
5.2 Telecommunications	\$0	\$0	\$0
6. Total Basic Cost of Construction (total 1.1 thru 5)	\$1,629,992	\$0	\$1,629,992
7.1 Financing Costs (Points etc)	\$0		\$0
7.2 Interim Interest Expense:: \$ <input type="text"/> At <input type="text"/> % for <input type="text"/> months	\$0		\$0
8. Total Project Cost: w/o CON fees - Total 6 thru 7.2	\$1,629,992	\$0	\$1,629,992
Application fees:			
9.1 Application Fee \$1,250. Only applies to Article 28.	\$2,000		\$2,000
9.2 Additional Processing Fee for Article 28 projects involving Construction. (.0045 x line 8) Only applies to Article 28	\$8,965		\$8,965
10 Total Project Cost with CON fees	\$1,640,957	\$0	\$1,640,957

Schedule 9 Proposed Plan for Project Financing

I. Summary of Proposed Financial Plan:

Check all that apply and fill in corresponding amounts.

	Type	Amount
	A. Lease	
X	B. Cash	\$ 164,096
	C. Land	
	D. Other	
X	E. Mortgage, Notes, or Bonds	\$ 1,476,861
	F. Refinancing	
	Total Mortgage / Notes / Bonds plus Refinancing (E + F)	\$ 1,476,861
	Total Project Financing (Sum A to F)	\$ 1,640,957

II. Details

A. Leases

	Not Applicable	Title of Attachment
1. List each lease with corresponding cost as if purchased each leased item. Breakdown each lease by total project cost and subproject costs, if applicable.	X	
2. Attach a copy of the proposed lease(s).	X	
3. Submit an affidavit indicating any business or family relationships between principals of the landlord and tenant	X	
4. If applicable, provide a copy of the lease assignment agreement and the Landlord's consent to the proposed lease assignment	X	
5. If applicable, identify separately the total square footage to be occupied by the Article 28 facility and the total square footage of the building	X	
6. Attach two letters from independent realtors verifying square footage rate.		#9 Realtor Letters
7. For all capital leases as defined by FASB Statement No. 13, "Accounting for Leases", provide the net present value of the monthly, quarterly or annual lease payments.	X	

B. Cash

Type	Amount
Accumulated Funds	
Sale of Existing Assets	
Gifts (fundraising program)	
Government Grants	
Other: Initial Owner Equity	\$ 164,096
TOTAL CASH	\$ 164,096

	Not Applicable	
1. Provide a breakdown of the sources of cash. See sample table above.		#10, Sources of Cash
2. Attach a copy of the latest certified financial statement and interim monthly or quarterly financial reports to cover the balance of time to date.	X	
3. If amounts are listed in "Accumulated Funds" provide cross-reference to certified financial statement or Schedule 2b, if applicable.	X	
4. Attach a full and complete description of the assets to be sold, if applicable.	X	
5. If amounts are listed in "Gifts (fundraising program)": • Provide a breakdown of total amount expected, amount already raised, and any terms and conditions affixed to pledges. • If a professional fundraiser has been engaged, submit fundraiser's contract and fundraising plan. • Provide a history of recent fund drives, including amount pledged and amount collected	X	
6. If amounts are listed in "Government Grants": • List the grant programs which are to provide the funds with corresponding amounts. Include the date the application was submitted. • Provide documentation of eligibility for the funds. • Attach the name and telephone number of the contact person at the awarding Agency(ies).	X	
7. If amounts are listed in "Other" attach a description of the source of financial support and documentation of its availability.	X	
8. Current Department policy requires a minimum equity contribution of 10% of total project cost (Schedule 8b line 10).		

C. Mortgage, Notes, or Bonds -- Not required for limited review

Equipment Loan

	Total Project	Units
Interest	6.75%	%
Term	7	Years
Payout Period	N/A	Years
Principal	\$ 1,476,861	\$

	Not Applicable	Title of Attachment
2. Attach a copy of a letter of interest from the intended source of permanent financing that indicates principal, interest, term, and payout period.		#7, Bank Letter of Interest
3. If New York State Dormitory Authority (DASNY) financing, then attach a copy of a letter from a mortgage banker.	X	
4. If the financing of this project becomes part of a larger overall financing, then a new business plan inclusive of a feasibility package for the overall financing will be required for DOH review prior to proceeding with the combined financing.	X	

D. Land -- Not required for limited review

NOT APPLICABLE

E. Other -- Not required for limited review

NOT APPLICABLE

F. Refinancing -- Not required for limited review

NOT APPLICABLE



233 Genesee Street, Utica, NY 13501
CNY Business & Professional Banking

January 29, 2009

Mr. Ted Kondzielawa , CFO
116 Business Park Associates, LLC
110 Business Park Drive
Utica, New York 13502

Dear Mr. Kondzielawa:

Please be advised that Manufacturers and Traders Trust Company ("M&T Bank") would like to express its interest in providing construction and permanent financing for the new Ambulatory Surgery Center to be developed by 116 Business Park Associates, LLC to be located at 116 Business Park Drive Utica, New York. This letter is an outline of basic terms and conditions and should not be considered a commitment. Any commitment is subject to M&T Bank's credit approval process.

Based upon our initial review of the proposed project, M&T Bank would consider lending approximately \$3,681,000 to the borrower at a fixed rate for a term of ten years and based on an amortization of up to fifteen years. A loan to value of no greater than ninety percent would be required. The loan would be secured by a mortgage on the real estate as well as a general security interest in all assets of the borrower. M&T Bank may require guarantees and will be determined as part of the formal underwriting process.

Based on the current rate environment, we would expect the fixed rate to be approximately 6.75%, however, these move up and down based upon the current rate environment.

We appreciate the opportunity to work with you and look forward to supporting this project. If you have any questions, please do not hesitate to contact me at 738-4834.

Sincerely,

A handwritten signature in cursive script that reads 'Alicia M Brockway'.

Alicia M Brockway
Relationship Manager



233 Genesee Street, Utica, NY 13501
CNY Business & Professional Banking

January 29, 2009

Mr. Ted Kondzielawa , CFO
Mohawk Valley EC, LLC
110 Business Park Drive
Utica, New York 13502

Dear Mr. Kondzielawa:

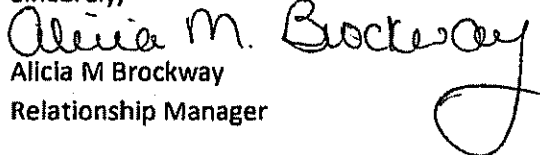
Please be advised that Manufacturers and Traders Trust Company ("M&T Bank") would like to express its interest in providing equipment and working capital financing for the new Ambulatory Surgery Center to be developed by Mohawk Valley EC, LLC to be located at 116 Business Park Drive Utica, New York. This letter is an outline of basic terms and conditions and should not be considered a commitment. Any commitment is subject to M&T Bank's credit approval process.

Based upon our initial review of the proposed equipment purchases for the project, M&T Bank would consider lending up to \$1,476,861 to the borrower at a fixed rate for a term of up to seven years. The equipment loan would be secured by the equipment being purchased and a general security interest in all business assets of the borrower. A minimum of 10% equity into the equipment purchase would be required. In addition, M&T Bank would consider a working capital term loan up to \$253,203 for a term of three years to five years that would also be secured by a general security interest in all assets of the borrower. M&T Bank may require guarantees and will be determined as part of the formal underwriting process.

Based on the current rate environment, we would expect the fixed rates to be approximately 6.75%, however, these move up and down based upon the current rate environment.

We appreciate the opportunity to work with you and look forward to supporting this project. If you have any questions, please do not hesitate to contact me at 738-4834.

Sincerely,


Alicia M Brockway
Relationship Manager

New York State Department of Health
Certificate Of Need Application

Schedule 13D

Table 13D - 1

	a	b	c
Categories	Current Year	Year 1 Incremental Revenue Impact	Year 3 Incremental Revenue Impact
Start date of year in question:(m/d/yyyy)			
1. Daily Hospital Services	N o t A p p l i c a b l e	N/A	N/A
2. Ambulatory Services		\$ 3,399,185	\$ 4,111,622
3. Ancillary Services		N/A	N/A
4. Total Gross Patient Care Services Rendered		\$ 3,399,185	\$ 4,111,622
5. Deductions from Revenue			
6. Net Patient Care Services Revenue		\$ 3,399,185	\$ 4,111,622
7. Other Operating Revenue (Identify sources)			
8. Total Operating Revenue (Total 1-7)		\$ 3,399,185	\$ 4,111,622
9. Non-Operating Revenue		\$ -	\$ -
10. Total Project Revenue		\$ 3,399,185	\$ 4,111,622

Table 13D - 4

Outpatient Services** Source of Revenue	Total Current Year			First Year Incremental			Third Year Incremental		
	Visits	Net Revenue*		Visits	Net Revenue*		Visits	Net Revenue*	
		%	Dollars (\$)		%	Dollars (\$)		%	Dollars (\$)
Commercial Fee for Service				120	2.5%	\$ 84,000	145	2.5%	\$ 101,500
Commercial Managed Care				4,134	79.1%	\$ 2,687,100	5,002	79.1%	\$ 3,251,300
Medicare Fee for Service				1,500	15.8%	\$ 538,362	1,815	15.8%	\$ 651,418
Medicare Managed Care									
Medicaid Fee for Service			A	30	0.4%	\$ 14,158	36	0.4%	\$ 16,160
Medicaid Managed Care			P	90	1.4%	\$ 49,230	109	1.5%	\$ 59,623
Private Pay			P	6	0.1%	\$ 4,800	7	0.1%	\$ 5,600
OASAS			i						
OMH			c						
Charity Care			a	120	0.6%	\$ 21,534	145	0.6%	\$ 26,021
Bad Debt			N						
All Other			b						
Total			t	6,000	100%	\$ 3,399,185	7,259	100%	\$ 4,111,622
Total of Inpatient and Outpatient Services	\$ -					\$ 3,399,185			\$ 4,111,622

Mohawk Valley Endoscopy Center

Utilization by Payor

	Year One 2010	Year Two 2011	Year Three 2012
Revenue / Visit			
Commercial / Fee for Service	\$ 700	\$ 700	\$ 700
Commercial / Managed Care	\$ 650	\$ 650	\$ 650
Medicare	\$ 359	\$ 359	\$ 359
Medicaid / Fee-for-Service	\$ 472	\$ 460	\$ 449
Medicaid Managed Care	\$ 547	\$ 547	\$ 547
Private Pay	\$ 800	\$ 800	\$ 800
Charity Care	\$ 179	\$ 179	\$ 179
Payor Mix			
Commercial / Fee for Service	2%	2%	2%
Commercial / Managed Care	68.9%	68.9%	68.9%
Medicare	25%	25%	25%
Medicaid / Fee-for-Service	0.5%	0.5%	0.5%
Medicaid Managed Care	1.5%	1.5%	1.5%
Private Pay	0.1%	0.1%	0.1%
Charity Care	2%	2%	2%
Visit Volume by Payor			
Commercial / Fee for Service	120	132	145
Commercial / Managed Care	4,134	4,547	5,002
Medicare	1,500	1,650	1,815
Medicaid / Fee-for-Service	30	33	36
Medicaid Managed Care	90	99	109
Private Pay		7	7
Charity Care	120	132	145
TOTAL		6,600	7,260
Total Revenue by Payor			
Commercial / Fee for Service	\$ 84,000	\$ 92,400	\$ 101,500
Commercial / Managed Care	\$ 2,687,100	\$ 2,955,550	\$ 3,251,300
Medicare	\$ 538,362	\$ 592,198	\$ 651,418
Medicaid / Fee-for-Service	\$ 14,158	\$ 15,194	\$ 16,160
Medicaid Managed Care	\$ 49,230	\$ 54,153	\$ 59,623
Private Pay	\$ 4,800	\$ 5,600	\$ 5,600
Charity Care	\$ 21,534	\$ 23,688	\$ 26,021
TOTAL	\$ 3,399,185	\$ 3,738,783	\$4,111,622
<i>average revenue per visit</i>	\$ 567	\$ 566	\$ 566

Reimbursement Rate Assumptions

Commercial Insurance (inc. HMO and PPO)

Based upon estimates of local commercial insurer payments.

Medicare

Based upon Medicare ambulatory surgery group payments for the region.

Medicaid

Based upon Medicaid APG blended rates.

Self-Pay

Based upon historical experience of the program.

**New York State Department of Health
Certificate Of Need Application**

Schedule 17E

Schedule 17 E - D&TC Statement of Revenue:

This schedule consists of the Detailed Monthly Cash Flow Analysis for the first year of operations (to be submitted as an attachment) and analysis of:

- Patient Revenue
- Other Operating Revenue
- Non-Operating Revenue
- Charges

Please see Attachment #14 for Monthly Cash Flow Analysis for First Year

Provide a breakdown of the utilization (threshold visits) by payer source. Provide supporting calculations for the rates assumed for each payer.

Please see Attachment #15 for Utilization by Payor

I. Patient Revenue	Commercial	Fee for Service	\$84,000
		Managed Care	\$2,687,100
	Medicare	Fee for Service	\$538,362
		Managed Care	
	Medicaid	Fee for Service	\$14,158
		Managed Care	\$49,230
	Private Pay		\$4,800
	OASAS		
	OMH		
	Charity Care		\$21,534
Bad Debt			
Ordered Ambulatory Services			
	TOTAL		\$3,399,185
II. Other Operating Revenue	Sale of Literature		
	Sale of Supplies to Other than Patients		
	Telephone		
	Other		
	TOTAL		
III. Non-Operating Revenue	Gifts, Legacies, and Bequests		
	Grants		
	Other Non-Operating Revenue		
	NYS Bad Debt Charity Care Pool Distrib.		
	TOTAL		
IV. Total Revenue (I, II, and III)			\$3,399,185

Mohawk Valley Endoscopy Center
Monthly Revenues, Expenditures and Cash Flow for Year 1

	Month of Operation												YEAR 1 TOTAL
	1	2	3	4	5	6	7	8	9	10	11	12	
TOTAL PATIENT REVENUE	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 3,399,185
EXPENSE													
1. Salaries & Wages	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 938,000
2. Employee Benefits	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 187,600
3. Professional Fees	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 33,500
4. Medical & Surgical Supplies	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 327,780
5. Non-medical & Non-surgical Supplies	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 12,000
6. Utilities	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 58,000
7. Purchased Services	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 24,000
8. Other Direct Expenses	\$ 24,761	\$ 24,761	\$ 24,761	\$ 24,761	\$ 24,761	\$ 24,761	\$ 24,761	\$ 24,761	\$ 24,761	\$ 24,761	\$ 24,761	\$ 24,761	\$ 297,130
10. Interest	\$ 9,184	\$ 9,184	\$ 9,184	\$ 9,184	\$ 9,184	\$ 9,184	\$ 9,184	\$ 9,184	\$ 9,184	\$ 9,184	\$ 9,184	\$ 9,184	\$ 110,211
11. Depreciation	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 227,142
12. Rent	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 480,312
TOTAL EXPENSES	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 2,695,675
SUMMARY OF REVENUE AND EXPENSES													
Total Revenue	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 3,399,185
Total Expenses	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 224,640	\$ 2,695,675
Surplus / (Loss)	\$ 58,626	\$ 58,626	\$ 58,626	\$ 58,626	\$ 58,626	\$ 58,626	\$ 58,626	\$ 58,626	\$ 58,626	\$ 58,626	\$ 58,626	\$ 58,626	\$ 703,510
MONTHLY CASH FLOW ANALYSIS													
Sources of Cash													
Initial Equity & Working Capital Loan	\$ 422,593												
Addition to Accounts Receivable	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265
Collections on A/R	\$ 42,490	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265
Net A/R monthly balance	\$ 240,776	\$ 240,776	\$ 240,776	\$ 240,776	\$ 240,776	\$ 240,776	\$ 240,776	\$ 240,776	\$ 240,776	\$ 240,776	\$ 240,776	\$ 240,776	\$ 240,776
TOTAL SOURCES	\$ 465,083	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265	\$ 283,265
Uses of Cash													
Addition to Accts Payable	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711
Payments on A/P	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711
Net A/P monthly balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL USES	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711	\$ 205,711
SOURCES MINUS USES	\$ 259,372	\$ 77,554	\$ 77,554	\$ 77,554	\$ 77,554	\$ 77,554	\$ 77,554	\$ 77,554	\$ 77,554	\$ 77,554	\$ 77,554	\$ 77,554	\$ 77,554
ENDING CASH BALANCE	\$ 259,372	\$ 336,926	\$ 414,481	\$ 492,035	\$ 569,589	\$ 647,143	\$ 724,698	\$ 802,252	\$ 879,806	\$ 957,360	\$ 1,034,915	\$ 1,112,469	

Mohawk Valley Endoscopy Center

Medicaid: APG Reimbursement Calculation

2007 Historical Rate	\$380.00	APG Weighting by Year		
2010 Base rate	\$ 76.08			
Capital Add-On	\$115.00	50%	75%	100%

APG	Weight	Estimated % of Cases	2010	2011	2012
134 Upper GI, Diagnostic	4.0352	35%	\$ 458.50	\$ 440.25	\$ 422.00
135 Upper GI, Tumor	5.4853	15%	\$ 513.66	\$ 522.99	\$ 532.32
136 Colonoscopy, Diagnostic	4.1844	35%	\$ 464.17	\$ 448.76	\$ 433.35
137 Colonoscopy, Therapeutic	4.5928	15%	\$ 479.71	\$ 472.07	\$ 464.42

Weighted Average APG Payment	\$ 471.94	\$ 460.41	\$ 448.88
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Medicare: APC Payment

APC	Weight	Estimated % of Cases	2010	2011	2012
141 Level I Upper GI Procedures	8.7462	48%	\$ 355.71	\$ 355.71	\$ 355.71
143 Lower GI Endoscopy	9.1051	52%	\$ 361.86	\$ 361.86	\$ 361.86

Weighted Average APC Payment	\$ 358.91	\$ 358.91	\$ 358.91
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Mohawk Valley Endoscopy Center Breakeven Analysis for Year 1 through Year 3

	Year 1	Year 2	Year 3
Average Revenue per Visit	\$ 567	\$ 566	\$ 566
Variable Cost per Visit (medical supplies, laundry,RNs)	\$ 159	\$ 164	\$ 170
Contribution Toward Fixed Cost per Visit	\$ 408	\$ 402	\$ 397
Total Fixed Cost	\$1,725,751	\$1,810,631	\$ 1,869,276
Number of Vists Needed to Cover Fixed Cost	4,235	4,502	4,714
Visits Projected for Program	6,000	6,600	7,260
Projected Visits less Breakeven Visits	1,765	2,098	2,546
Projected % over Breakeven	42%	47%	54%



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

February 5, 2010

Mr. Gene Morreale
Chief Executive Officer
Oneida Healthcare Center
321 Genesee Street
Oneida, New York 13421

Re: CON # 092142
Mohawk Valley E.C., L.L.C.

Dear Mr. Morreale:

The Department of Health has received a Certificate of Need (CON) application for the establishment of a freestanding ambulatory surgery center (ASC) in Utica, which is within the area served by your facility. The applicant and proposed operator is Mohawk Valley E.C., L.L.C. The proposed location is 116 Business Park Drive, Utica, New York 13502.

The applicant proposes to operate a single-specialty ASC offering gastroenterology services and to perform 6,000 procedures per year. Enclosed is an excerpt from the application that lists the physicians who will be operating at the facility.

We invite you to comment on any adverse effects you foresee for your facility if the proposed project is approved. If you wish to respond, please provide information on the following:

- The impact of the proposed ASC on your hospital's community-oriented services. Please be as precise as possible. For example, if you project a loss of revenues to the proposed ASC, please show how this estimate is derived; and please furnish the current costs of the services that would be adversely affected by the establishment of the proposed facility.
- Total utilization of operating room (OR) capacity at your hospital (by percentage) during regular hours and off-hours.
- A breakdown of OR utilization by total inpatient and total ambulatory cases.
- Names of the surgeons on the enclosed list who currently perform surgery at your hospital and the number of ambulatory surgery cases for each in the most recent calendar year for which information is available.

- Whether your facility reserves OR time on a regular basis (“block time”) for any of the surgeons in question. If so, please enclose an OR schedule (weekly or monthly) delineating the number of ORs and the times reserved for these practitioners.
- Audited financial statement for the last two years available.
- Expenditures for Bad Debt and Charity Care in your two most recent fiscal years.

Please feel free to enclose any additional information you deem pertinent.

We ask that you share your response to this letter with the applicant at the following address:

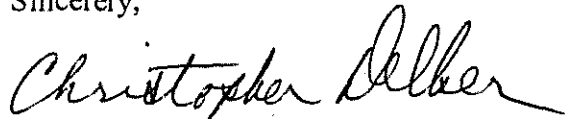
Mohawk Valley E.C.,L.L.C.
c/o Ms. Ann M. Gormley
Empire Health Advisors
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Enclosed is a list of all hospitals receiving this letter.

To ensure that the Public Health Council and the State Hospital Review and Planning Council have ample time to consider your comments, please forward your response to the New York State Department of Health, Bureau of Project Management, 433 River Street, 6th Floor, Troy, New York 12180-2299 no later than March 1, 2010.

In the meantime, if you have any questions, please call me at (518) 402-0966 or write me via e-mail to cpd02@health.state.ny.us.

Sincerely,



Christopher Delker
Health Program Administrator IV
Division of Health Facility Planning

Enclosures

Physician to Practice at
Mohawk Valley E.C., L.L.C.
CON # 092142

<u>Name</u>	<u>Specialty</u>
Stanley Weiselberg, M.D.	Gastroenterology
Norman Neslin, M.D.	Gastroenterology
Robert Pavelock, M.D.	Gastroenterology
Bradley Sklar, M.D.	Gastroenterology
Richard Cherkpak, M.D.	Gastroenterology
Brett Gandhi, M.D.	Gastroenterology
Garth Garramone, D.O.	Gastroenterology

**List of Hospitals Receiving Letter
Mohawk Valley E.C., L.L.C.
CON # 092142**

Mr. Gene Morreale
Chief Executive Officer
Oneida Healthcare Center
321 Genesee Street
Oneida, New York 13421

Mr. Scott H. Perra
Chief Executive Officer
Faxton-St. Luke's Healthcare
St. Luke's Division
1656 Champlain Avenue
Utica, New York 13502

Sr. Johanna DeLelys
Chief Executive Officer
St. Elizabeth Medical Center
2209 Genesee Street
Utica, New York 13501



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

February 5, 2010

Sr. Johanna DeLelys
Chief Executive Officer
St. Elizabeth Medical Center
2209 Genesee Street
Utica, New York 13501

Re: CON # 092142
Mohawk Valley E.C., L.L.C.

Dear Sr. DeLelys:

The Department of Health has received a Certificate of Need (CON) application for the establishment of a freestanding ambulatory surgery center (ASC) in Utica, which is within the area served by your facility. The applicant and proposed operator is Mohawk Valley E.C., L.L.C. The proposed location is 116 Business Park Drive, Utica, New York 13502.

The applicant proposes to operate a single-specialty ASC offering gastroenterology services and to perform 6,000 procedures per year. Enclosed is an excerpt from the application that lists the physicians who will be operating at the facility.

We invite you to comment on any adverse effects you foresee for your facility if the proposed project is approved. If you wish to respond, please provide information on the following:

- The impact of the proposed ASC on your hospital's community-oriented services. Please be as precise as possible. For example, if you project a loss of revenues to the proposed ASC, please show how this estimate is derived; and please furnish the current costs of the services that would be adversely affected by the establishment of the proposed facility.
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- Audited financial statement for the last two years available.
- Expenditures for Bad Debt and Charity Care in your two most recent fiscal years.

Please feel free to enclose any additional information you deem pertinent.

We ask that you share your response to this letter with the applicant at the following address:

Mohawk Valley E.C.,L.L.C.
c/o Ms. Ann M. Gormley
Empire Health Advisors
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Enclosed is a list of all hospitals receiving this letter.

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In the meantime, if you have any questions, please call me at (518) 402-0966 or write me via e-mail to cpd02@health.state.ny.us.

Sincerely,



Christopher Delker
Health Program Administrator IV
Division of Health Facility Planning

Enclosures

**Physician to Practice at
Mohawk Valley E.C., L.L.C.
CON # 092142**

<u>Name</u>	<u>Specialty</u>
Stanley Weiselberg, M.D.	Gastroenterology
Norman Neslin, M.D.	Gastroenterology
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Brett Gandhi, M.D.	Gastroenterology
Garth Garramone, D.O.	Gastroenterology

**List of Hospitals Receiving Letter
Mohawk Valley E.C., L.L.C.
CON # 092142**

Mr. Gene Morreale
Chief Executive Officer
Oneida Healthcare Center
321 Genesee Street
Oneida, New York 13421

Mr. Scott H. Perra
Chief Executive Officer
Faxton-St. Luke's Healthcare
St. Luke's Division
1656 Champlain Avenue
Utica, New York 13502

Sr. Johanna DeLelys
Chief Executive Officer
St. Elizabeth Medical Center
2209 Genesee Street
Utica, New York 13501



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James W. Clyne, Jr.
Executive Deputy Commissioner

February 5, 2010

Mr. Scott Perra
Chief Executive Officer
Faxton-St. Luke's Healthcare
St. Luke's Division
1656 Champlain Avenue
Utica, New York 13502

Re: CON # 092142
Mohawk Valley E.C., L.L.C.

Dear Mr. Perra:

The Department of Health has received a Certificate of Need (CON) application for the establishment of a freestanding ambulatory surgery center (ASC) in Utica, which is within the area served by your facility. The applicant and proposed operator is Mohawk Valley E.C., L.L.C. The proposed location is 116 Business Park Drive, Utica, New York 13502.

The applicant proposes to operate a single-specialty ASC offering gastroenterology services and to perform 6,000 procedures per year. Enclosed is an excerpt from the application that lists the physicians who will be operating at the facility.

We invite you to comment on any adverse effects you foresee for your facility if the proposed project is approved. If you wish to respond, please provide information on the following:

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- Audited financial statement for the last two years available.
- Expenditures for Bad Debt and Charity Care in your two most recent fiscal years.

Please feel free to enclose any additional information you deem pertinent.

We ask that you share your response to this letter with the applicant at the following address:

Mohawk Valley E.C.,L.L.C.
c/o Ms. Ann M. Gormley
Empire Health Advisors
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Enclosed is a list of all hospitals receiving this letter.

To ensure that the Public Health Council and the State Hospital Review and Planning Council have ample time to consider your comments, please forward your response to the New York State Department of Health, Bureau of Project Management, 433 River Street, 6th Floor, Troy, New York 12180-2299 no later than March 1, 2010.

In the meantime, if you have any questions, please call me at (518) 402-0966 or write me via e-mail to cpd02@health.state.ny.us.

Sincerely,



Christopher Delker
Health Program Administrator IV
Division of Health Facility Planning

Enclosures

**Physician to Practice at
Mohawk Valley E.C., L.L.C.
CON # 092142**

<u>Name</u>	<u>Specialty</u>
Stanley Weiselberg, M.D.	Gastroenterology
Norman Neslin, M.D.	Gastroenterology
Robert Pavelock, M.D.	Gastroenterology
Bradley Sklar, M.D.	Gastroenterology
Richard Cherkpak, M.D.	Gastroenterology
Brett Gandhi, M.D.	Gastroenterology
Garth Garramone, D.O.	Gastroenterology

**List of Hospitals Receiving Letter
Mohawk Valley E.C., L.L.C.
CON # 092142**

Mr. Gene Morreale
Chief Executive Officer
Oneida Healthcare Center
321 Genesee Street
Oneida, New York 13421

Mr. Scott H. Perra
Chief Executive Officer
Faxton-St. Luke's Healthcare
St. Luke's Division
1656 Champlain Avenue
Utica, New York 13502

Sr. Johanna DeLelys
Chief Executive Officer
St. Elizabeth Medical Center
2209 Genesee Street
Utica, New York 13501



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

February 5, 2010

Ms. Ann Gormley
Empire Health Advisors
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Re: CON # 092142
Mohawk Valley E.C.,L.L.C.

Dear Ms. Gormley:

Review of the referenced application by Department staff has resulted in the need for additional information. To enable staff to adequately review your proposal, please respond to the following questions:

1. Is it expected that the utilization projected in your application will meet an unmet need in your community, or will your facility provide ambulatory surgery service to a clientele who is generally served by existing ambulatory surgery providers?
2. If your facility is expected primarily to meet an unmet need in the community, what data support the existence of the unmet need?
3. If your facility is expected primarily to provide service to a clientele now served by existing providers, why would future patients use your facility instead of existing facilities?
4. From where will employees of your facility be recruited? (For example, local hospitals, private physician practices, accredited schools, training programs).
5. What steps will your facility take to retain skilled staff to counter high staff turnover found in many health care facilities?
6. How many of the procedures you project for your proposed facility are currently performed in an office setting (office-based surgery)?

We ask that you share your response to this letter with the administrators at concerned hospitals at the following addresses:

Mr. Gene Morreale
Chief Executive Officer
Oneida Healthcare Center
321 Genesee Street
Oneida, New York 13421

Mr. Scott H. Perra
Chief Executive Officer
Faxton-St. Luke's Healthcare
Faxton Division
1656 Champlain Avenue
Utica, New York 13502

Sr. Johanna DeLelys
Chief Executive Officer
St. Elizabeth Medical Center
2209 Genesee Street
Utica, New York 13501

To ensure that the State Hospital Review and Planning Council have ample time to consider your comments, please forward your response to the New York State Department of Health, Bureau of Project Management, 433 River Street, 6th Floor, Troy, New York 12180-2299 no later than March 1, 2010.

In the meantime, if you have any questions, please call me at (518) 402-0966 or write me via e-mail to cpd02@health.state.ny.us.

Sincerely,



Christopher Delker
Health Program Administrator IV
Division of Health Facility Planning

 STATE OF NEW YORK
DEPARTMENT OF HEALTH

Pmu

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

January 22, 2010

Ms. Ann Gormley
Consultant
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

RE: 092142-B
Mohawk Valley EC, LLC d/b/a
Mohawk Valley Endoscopy Center
(Oneida County)

Dear Ms. Gormley:

Review of the above application has revealed the need for the additional information requested in the enclosure from the Bureau of Financial Analysis. In preparing your answers to the questions, please repeat each question and then provide the answer. Please submit your response within 30 days of the date of this letter in accordance with 10 NYCRR 710.3(a), as follows:

- 1) One copy to the Bureau of Financial Analysis, New York State Department of Health, Hedley Park Place, 6th. Floor, 433 River Street, Troy, New York 12180-2299.
- 2) An original and eight copies of your response to Jeffrey Rothman, Director, Bureau of Project Management, New York State Department of Health, Hedley Park Place, 6th. Floor, 433 River Street, Troy, New York, 12180-2299

Processing of your application by the Bureau of Financial Analysis cannot be complete until the information is received and reviewed. Also, if this project requires review by the State Hospital Review and Planning Council, such review may have to be delayed if the requested information is not received promptly (particularly if the Bureau of Financial Analysis does not receive a separate copy). Accordingly, you are encouraged to submit the response at your earliest opportunity. In this regard, be advised that a single faxed response to this request does not constitute a full and complete response.

If you have any question on the information being requested, please contact the individual identified on the enclosure.

Sincerely,



Charles P. Abel, Director
Bureau of Financial Analysis

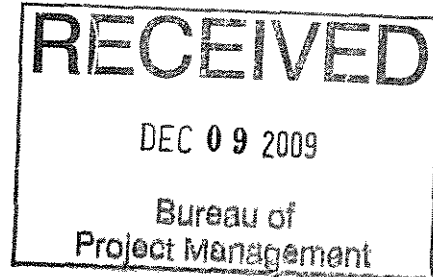
092142-B
Mohawk Valley EC, LLC d/b/a
Mohawk Valley Endoscopy Center
(Oneida County)

The following questions have been prepared by the Bureau of Financial Analysis. If additional information is needed, please contact Bill Lindenman at (518) 402-0953.

1. Please indicate the start and completion dates of Construction on Schedule 8B.
2. Please update your letter of interest for the equipment loan, the amount shown on Line E of Schedule 9-I is \$1,476,861 and the letter of interest is for \$1,080,000. Also, please complete Schedule 9 C, Terms of Proposed Financing. Additionally, it is preferable if the loan has a fixed rate and maintains a life consistent with the equipment's.
3. Schedule 5, Working Capital Financing, indicates that 50% or \$253,203 will be borrowed through a letter of credit at approximately 6.75%. It is preferred that loans for working capital have a 3 to 5-year term and be self-amortizing loan with a fixed rate. Please revise the letter of interest.
4. According to Schedule 3B-III.A Representative Governance-Ownership, the landlord's and applicant's members are the same and furthermore, the lease states the landlord will construct the ambulatory surgery center at its sole cost and expense.
 - What is the landlord's estimated cost to construct the proposed ambulatory surgery center? Based upon the letter of interest, the construction cost appears to be in the range of \$3.6 to \$4.0 million while the real estate letters use an estimate of \$2.3 million.
 - How much of the landlord's rent (\$480,312 per year or \$42 per square feet) is allocated to amortizing the landlord's loan?
 - What contingencies or assurance are in place to address the landlord's balloon obligation at the end of five (5) years?
5. Please update Schedule 13D, Annual Operating Revenue for Charity Care. Note the Department has a policy that at least 2% of the total visits are for Charity Care.
6. Please provide analysis showing how the Medicare and Medicaid rates were calculated by categorizing each procedure type into the appropriate category and applying the regional adjusted rate to the volume projections. Please state if these projections take into consideration New York State's new rate methodology, Ambulatory Patient Groups (APG) and any reductions to Medicare reimbursements.
7. Please provide a breakeven analysis for the 1st and 3rd years.

December 9, 2009

Mr. Jeffrey Rothman, Director
Information and Technology Services Group
New York State Department of Health
Hedley Park Place, 6th Floor
433 River Street
Troy, NY 12180-2299



RE: CON#092142 – Mohawk Valley EC, LLC

Dear Mr. Rothman:

We are responding to the questions raised by the Division of Certification and Surveillance regarding the above reference to the Certificate of Need application.

1. Please provide the hours of operation.

The ambulatory surgery center will operate Monday through Friday from 7:00 a.m. – 3:30 p.m. As the Center grows, Saturday hours may be added for patient convenience.

2. Please verify that anesthesia services will be provided by board-certified or board-eligible anesthesiologists.

Since the Center will only use moderate sedation (Fentanyl, Versed, Demerol) anesthesia will be managed by the board-certified gastroenterologists. The gastroenterologists will receive additional training in managing and administering this type of sedation and will be credentialed as such after passing their sedation test. The physicians will be additionally credentialed to manage and supervise registered nurses assisting with sedation administration.

3. Please verify that the list of surgical procedures to be performed at the Center will be reviewed annually, and as needed, to determine the appropriateness of adding new procedures consistent with individual physician expertise.

At the annual meeting of the corporation the members will review the list of surgical procedures being performed and medication used in the Center. If a staff physician requests to add a new procedure, it will be discussed at the quarterly Medical Executive Committee where credentials

Handwritten initials: JFR

will be reviewed along with the appropriateness of the procedure to be performed in the Center. If approved, the request will be brought to the quarterly member meeting for discussion and approval. Procedures added will stay within the regulatory requirements of those that can be performed in a single-specialty ambulatory surgery center providing endoscopy services.

4. Please describe the method of addressing patient concerns after regular business hours.

All patients upon discharge will be given instructions to call the Center if they have any concerns after returning home. Each patient will receive a follow-up phone call within 24 hours of their procedure. After hours calls from Center patients are answered by the on-call physician for the Center. All staff physicians of the Center will rotate through this on-call system.

5. Please provide the name(s) of the hospital(s) with which affiliation agreements will be sought.

The Center is seeking to enter into affiliation agreements with St. Elizabeth's Medical Center and Faxton-St Luke's. Initial meetings have been held with both hospitals.

6. Will the services of the Medical Director be through an agreement or contract. If so, please provide a copy of that agreement or contract. If not, what is the structure for these services.

The Center will have Dr. Garth Garramone, a staff physician at the proposed Center, serve as its initial Medical Director. A copy of the draft Medical Director agreement is attached (Attachment A).

7. Are there any contract services for staff?

There are no contracted services for staff other than the Medical Director, who will be a credentialed staff physician of the Center.

8. Please provide an indication of how the LLC anticipates securing input to ensure it is meeting community needs.

The Center will be monitoring utilization of its procedure rooms, management of open schedules and wait times for a procedure to determine if it is meeting community needs. Since the Center accepts all patients, including Medicare, Medicaid and the uninsured, monitoring these utilization measures should guide the Center in its efforts to meet their respective needs and respond accordingly. In addition, the members of the Center have relationships with several local facilities serving special populations and uninsured patients to assist in evaluating the needs of the community. These facilities include: Upstate Cerebral Palsy; ARC-Oneida Lewis Chapter; the Hobart Street Health Clinic and the hospitals where the members have privileges.





If any further information is required, please contact me at your earliest convenience at (518) 583-4900. Thank you for your assistance with this application.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ann M. Gornley'. The signature is fluid and cursive, with the first name 'Ann' being the most prominent.

Ann M. Gornley
Consultant

MEDICAL DIRECTOR AGREEMENT

THIS AGREEMENT is entered into as of _____, 2010 by and between MOHAWK VALLEY EC, LLC, a New York limited liability company (the "Company") and GARTH J. GARRAMONE, D.O. ("Physician").

RECITALS:

A. The Company owns and operates an Article 28-licensed single specialty ambulatory surgery center specializing in endoscopy services located at 116 Business Park Drive, Utica, New York (the "Surgery Center").

B. Physician is a New York State-licensed physician board certified in gastroenterology.

C. The Company wishes to retain Physician to serve as the medical director of the Surgery Center pursuant to the terms of this Agreement.

NOW, THEREFORE, the parties, intending to be legally bound, hereby agree as follows:

1. Medical Director Services. During the term of this Agreement Physician shall serve as the Surgery Center's Medical Director and shall provide the services listed on Exhibit A. The parties anticipate that the Physician will spend, on average, 10 hours per month to provide medical director services under this Agreement.
2. Term. The term of this Agreement shall commence on the date 60 days prior to the date that the Health Department issues an operating certificate for the Surgery Center (the "Operating Date") or on such earlier date as agreed by the parties and shall continue for an initial period of one year following the Operating Date. Thereafter, this Agreement shall automatically renew for additional one-year terms unless earlier terminated as provided in this Agreement.
3. Independent Contractor. Physician shall at all times be an independent contractor of the Company. Nothing herein shall be construed to create an employer/employee relationship between the Company and Physician. Physician shall not be eligible for any employee benefit programs offered by the Company to its full or part-time employees.
4. Compensation. In consideration of medical director services to be provided hereunder the Company shall pay Physician annual compensation of \$18,000, payable in monthly installments of \$1,500 on the first day of each month.
5. Termination. This Agreement shall terminate and Physician shall cease to be the Medical Director of the Surgery Center upon occurrence of any of the following events:
 - a. The mutual agreement of Physician and the Company;

- b. Death of Physician;
- c. Loss or suspension of Physician's license to practice medicine in New York State; or
- d. Upon 60 days prior written notice from one party to the other.

6. Miscellaneous.

- a. In compliance with the regulations of the Health and Human Services Department, the Company agrees to give the Secretary of Health and Human Services and the Comptroller General of the United States, upon their written request, access to this Agreement and to the books, documents, and records of the Company relating to this Agreement which are necessary to verify the nature and extent of costs of services furnished hereunder. Said books and records will be available for a period of four years after such services are rendered.
- b. Should any provision of this Agreement be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be enforceable to the fullest extent permitted at law or in equity.
- c. This Agreement contains the entire agreement between the parties concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings, and agreements, whether written or oral concerning the subject matter hereof.
- d. This Agreement shall not be amended, altered, changed, modified, supplemented or rescinded in any manner except by written agreement executed by both parties hereto.
- e. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representative, successors and assigns.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

MOHAWK VALLEY EC, LLC

By: _____
Member

Garth J. Garramone, D.O.



STATE OF NEW YORK
DEPARTMENT OF HEALTH

PMU

433 River Street, Suite 303

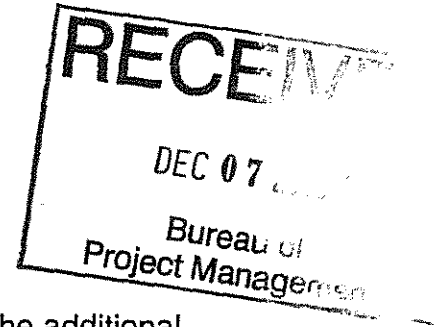
Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Ann Gormley
Empire Health Advisors
60 Railroad Place
Suite 101
Saratoga Springs, NY 12866

November 30, 2009

Re: 092142
Mohawk Valley EC



Dear Ms. Gormley:

Review of the above application has revealed the need for the additional information being requested in the enclosure from the Division of Certification & Surveillance. In preparing answers to the questions, please repeat each question and then provide the answer. Please submit your response within 30 days of the date of this letter in accordance with 10 NYCRR 710.3 (a), as follows:

1. An original and five copies of your response to Jeffrey Rothman, Director, Information and Technology Services Group, New York State Department of Health, Hedley Park Place, 6th Floor, 433 River Street, Troy, New York 12180-2299.
2. One copy to the Division of Certification & Surveillance @ DSCCON@health.state.ny.us.

Processing of your application by the Division of Certification & Surveillance cannot be completed until the information is received and reviewed. Also, if this project requires review by the State Hospital Review and Planning Council, such review may have to be delayed if the requested information is not received promptly. Accordingly, you are encouraged to submit the response at your earliest opportunity. In this regard, be advised that a single faxed response to this request does not constitute a full and complete response. The fax number is (518) 402-1010.

If you have any questions on the information being requested, please feel free to contact me.

Sincerely,

Susan F. Berry
CON Unit Coordinator
Division of Certification
& Surveillance

Enc.

Facility Name: Mohawk Valley EC
Project No. 092142

The following questions have been prepared by the Division of Certification & Surveillance. If you have any questions, please contact Susan Berry at (518) 402-1008.

1. Please provide the hours of operation.
2. Please verify that anesthesia services will be provided by board-certified or board-eligible anesthesiologists.
3. Please verify that the list of surgical procedures to be performed at the Center will be reviewed annually, and as needed, to determine the appropriateness of adding new procedures consistent with individual physician expertise.
4. Please describe the method of addressing patient concerns after regular business hours.
5. Please provide the name(s) of the hospital(s) with which affiliation agreements
6. Will the services of the Medical Director be through an agreement or contract. If so, please provide a copy of that agreement or contract. If not, what is the structure for these services.
7. Are there any contract services for staff?
8. Please provide an indication of how the LLC anticipates securing input to ensure it is meeting community needs.



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

November 23, 2009

Ms. Ann Gormley
Consultant
Empire Health Advisor
60 Railroad Place, Suite 101
Saratoga Springs, New York 12866

Re: 092142 B
Mohawk Valley EC, LLC
(Oneida County)
Establish and construct a single
specialty ambulatory surgery center
providing endoscopy services, at
116 Business Park Drive, Utica

Dear Ms. Gormley:

The above referenced CON application, for which you have been designated the contact person, has been distributed to all reviewing units and, if operating, your local health systems agency for processing in accordance with 10 NYCRR 710. Please refer to the enclosed Important Notice for further information with respect to this process.

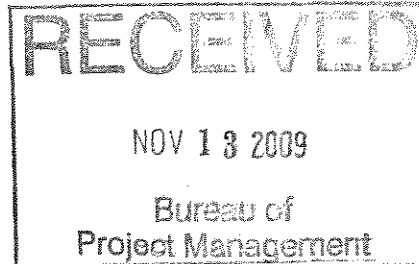
The mandatory review of your project for the criteria of public need, financial feasibility, and character and competence as required by the Public Health Law may determine that the proposal is unapprovable. Therefore, prior to entering into any contractual commitments or commencing construction, the final determination of the Director of the OHSM, or Public Health Council if establishment is involved, must be obtained.

Sincerely,

Jeffrey R. Rothman, M.S., M.B.A.
Director
Bureau of Project Management

Enclosure
JRR/KJM/ss

November 12, 2009



1-original
8-Copies

Project Management Group
Division of Health Facility Planning
Office of Health Systems Management
New York State Department of Health
Attn: Mr. Jeffrey Rothman
433 River Street, 6th Floor
Troy, New York 12180-2299

RE: Mohawk Valley EC, LLC

Dear Mr. Rothman:

Enclosed please find an original and eight copies of a Certificate of Need application for a proposed free-standing, single-specialty, ambulatory surgery center sponsored by Mohawk Valley EC, LLC.

Please contact me if you have any questions regarding this application at (518) 583-4900.

Sincerely,

A handwritten signature in cursive script that reads "Ann M. Gormley".

Ann M. Gormley
Consultant

Enc

New York State Department of Health
 Certificate of Need Application

RECEIVED

NOV 13 2009

Schedule 1A

1-Original
 8-Copies

Cashline

12666
 \$2,000

Schedule 1 A - General Information - All Applicants
 Project Management

Main Site	MAIN SITE PFI	TYPE OF FACILITY	MAIN SITE NAME	
		ASC	Mohawk Valley EC, LLC	
	STREET & NUMBER			
	116 Business Park Drive			
	CITY		COUNTY	ZIP
Utica		Oneida	13502	

Project Site	PROJECT SITE PFI	TYPE OF FACILITY	PROJECT SITE NAME	
		ASC	Mohawk Valley EC, LLC	
	STREET & NUMBER			
	116 Business Park Drive			
	CITY		COUNTY	ZIP
Utica		Oneida	13502	

Operator Information	OPERATING CERTIFICATE NUMBER	TYPE OF FACILITY	LEGAL ENTITY THAT WILL OPERATE OF THE FACILITY (or proposed operator)	
		ASC	Mohawk Valley EC, LLC	
	STREET & NUMBER			
	116 Business Park Drive			
	CITY		COUNTY	ZIP
Utica		Oneida	13502	

Title of Attachment:

Is the applicant an existing facility? If yes, attach a photocopy of the resolution of partners, corporate directors, or LLC managers, as the case may be, authorizing the project.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
Is the applicant part of an "established article 28* network" as defined in section 401.1(j) of 10 nycrr? If yes, attach a statement that identifies the network and describes the applicant's affiliation. Attach an organizational chart, if available.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	

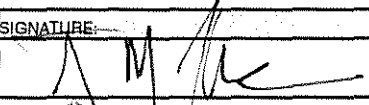
Type of Application: Establishment Construction Administrative Limited

Total Project Cost:	\$1,629,992.00
Amount of Application Fee (see Schedule 8)	\$2,000

Acknowledgement And Attestation

I hereby certify, under penalty of perjury, that I am duly authorized to subscribe and submit this application on behalf of the applicant:

I further certify that the information contained in this application and its accompanying schedules and attachments are accurate, true and complete in all material respects. I acknowledge and agree that this application will be processed in accordance with the provisions of articles 28, 36 and 40 of the public health law and/or article 7 of the social services law, and implementing regulations, as the case may be.

SIGNATURE: 	DATE
PRINT OR TYPE NAME	TITLE
Ted Kondzielawa	Administrator

70516

**New York State Department of Health
Certificate of Need Application**

Schedule 1A

Contacts:

Applicant should identify the operator's chief executive officer, or equivalent official, to whom all official correspondence from DOH about this application should be addressed

CHIEF EXECUTIVE	NAME AND TITLE OF CHIEF EXECUTIVE		
	Ted Kondzielawa, Administrator		
	STREET & NUMBER		
	110 Business Park Drive c/o Digestive Disease Medicine		
	CITY	STATE	ZIP
	Utica	NY	13502
TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
315-624-7000	315-793-1179	ddmted@yahoo.co	

Applicant may designate a second person to whom copies of all official correspondence from DOH about this application should be addressed. (This could be the applicants attorney, or a consultant)

CONTACT INFORMATION	CONTACT PERSON'S COMPANY	NAME AND TITLE OF CONTACT PERSON	
	Empire Health Advisor	Ann Gormley, Consultant	
	STREET & NUMBER		
	60 Railroad Place, Suite 101		
	CITY	STATE	ZIP
	Saratoga Springs	NY	12866
TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
518-583-4900	518-583-4999		

The applicant's lead attorney should be identified:

ATTORNEY	NAME		
	Bruce Smith, Esq., Wood and Smith		
	STREET & NUMBER		
	110 W. Fayette Street		
	CITY	STATE	ZIP
	Syracuse	NY	13202
TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
315-423-0400	315-424-1011	bsmith@woodsmithlaw.com	

If a consultant prepared the application, the consultant should be identified:

CONSULTANT	NAME		
	Ann M. Gormley, Empire Health Advisors		
	STREET & NUMBER		
	60 Railroad Place, Suite 101		
	CITY	STATE	ZIP
	Saratoga Springs	NY	12866
TELEPHONE	FAX NUMBER	E-MAIL ADDRESS	
518-583-4900	518-583-4999		

**New York State Department of Health
Certificate of Need Application**

Schedule 1A

The applicant's lead accountant should be identified:

ACCOUNTANT	NAME		
	John D. Marshall, CPA, Testone, Marshall and Discenza, CPAs		
	STREET & NUMBER		
	The Foundry, 432 North Franklin Street		
	CITY	STATE	ZIP
	Syracuse	NY	13204
	TELEPHONE	FAX NUMBER	E-MAIL ADDRESS
315-476-4004	315-475-1513	jmarshall@tmdcpas.com	

Checklist of Schedules Included in This Application

Schedule Number	Schedule Name	Required	Included
1	General Information Forms	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2a	Personal Qualifying Information	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2b	Personal Financial Statement	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2c	Not-For-Profit Director's Statement	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3b	Basic Legal Information and Documentation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4	Ownership Transfers Only- Additional Legal Information For All Articles	<input type="checkbox"/>	<input type="checkbox"/>
5	Working Capital Financing Plan (Not Applicable for Article 7)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
6	Architectural Submission	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
7	Environmental Assessment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
8	Project & Subproject Cost Summary	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
9	Proposed Plan For Project Financing	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
10	Space & Construction Cost Distribution	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
11	Movable Equipment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
12a	Adult Care Facilities Program Information	<input type="checkbox"/>	<input type="checkbox"/>
12c	Architectural	<input type="checkbox"/>	<input type="checkbox"/>
12d	Project Financing or Lease	<input type="checkbox"/>	<input type="checkbox"/>
12e	Projected Start Up Operating Budget- (2 Years)	<input type="checkbox"/>	<input type="checkbox"/>
12f	Operating Budget- Adult Care Facility -Full Occupancy	<input type="checkbox"/>	<input type="checkbox"/>
13a	Assurances	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
13b	Staffing	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
13c	Annual Operating Costs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
13d	Annual Operating Revenues	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
16a	Hospital Program Information	<input type="checkbox"/>	<input type="checkbox"/>
16b	Community Need	<input type="checkbox"/>	<input type="checkbox"/>
16c	Impact of CON Application - Hospital Operating Certificate	<input type="checkbox"/>	<input type="checkbox"/>
16d	Hospital Outpatient Departments	<input type="checkbox"/>	<input type="checkbox"/>
16e	Hospital Utilization/Discharge and Patient Days	<input type="checkbox"/>	<input type="checkbox"/>
16f	Hospital Facility Access	<input type="checkbox"/>	<input type="checkbox"/>
17a	Diagnostic & Treatment Center Program Information	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
17b	Community Need	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
17c	Impact of CON Application - D&TCs Operating Certificate	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
17d	D&TC Allocation of Operating Costs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
17e	D&TC Statement of Revenue	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
18a	Residential Health Care Facility (RHCF) Program Information	<input type="checkbox"/>	<input type="checkbox"/>
18b	Impact of CON Application - RHCF Operating Certificate	<input type="checkbox"/>	<input type="checkbox"/>
18c	RHCF Space & Construction Cost Distribution	<input type="checkbox"/>	<input type="checkbox"/>
18d	RHCF Statement of Functional Expenses	<input type="checkbox"/>	<input type="checkbox"/>
18e	RHCF Analysis of Net Patient Revenue & Total Operating Revenue	<input type="checkbox"/>	<input type="checkbox"/>
19a	Adult Day Health Care Programs (ADHCP) Program Information	<input type="checkbox"/>	<input type="checkbox"/>
19b	ADHCP Services-Staffing/Program Information	<input type="checkbox"/>	<input type="checkbox"/>
20a	OMH Component (If Applicable)	<input type="checkbox"/>	<input type="checkbox"/>
21a	CHHA and LTHHCP Program Information	<input type="checkbox"/>	<input type="checkbox"/>
21b	Impact of CON Application - CHHA & LTHHCP Operating Certificate	<input type="checkbox"/>	<input type="checkbox"/>
21d	CHHA/LTHHCP Operating Cost	<input type="checkbox"/>	<input type="checkbox"/>
21e	CHHA/LTHHCP Projected Operating Revenue	<input type="checkbox"/>	<input type="checkbox"/>
21f	CHHA/LTHHCP Projected Utilization By Payer Category	<input type="checkbox"/>	<input type="checkbox"/>
22a	Hospices Program Information	<input type="checkbox"/>	<input type="checkbox"/>
22b	Impact of CON Application - Hospices Operating Certificate	<input type="checkbox"/>	<input type="checkbox"/>
22d	Hospices Operating Costs	<input type="checkbox"/>	<input type="checkbox"/>
22e	Hospices Utilization and Revenue Estimates	<input type="checkbox"/>	<input type="checkbox"/>

Schedule 1 B - Abbreviated Executive Summary

Instructions:

In the space below, i.e., no more than one page, provide a succinct overview of your proposal. This may be done in bullet format. The purpose of the Abbreviated Executive Summary (AES) is to give the reviewer a conceptual understanding of the proposal. The AES should summarize the key elements of the proposed project. Details will be contained in the appropriate schedules of the application.

Establishment of a free-standing ambulatory surgery center, single-specialty.

- Mohawk Valley EC, LLC (“MVEC”) proposes to develop a single-specialty ambulatory surgery center to provide endoscopy services (the “Center”). The Center will include four operatories and will be located at 116 Business Park Drive, Utica, NY in a building owned by 116 Business Park Associates, LLC, a limited liability company whose ownership is identical to MVEC’s.
- MVEC, which will operate the Center, is a limited liability company whose seven members are also partners in Digestive Disease Medicine of Central New York, LLP (“DDM”), a medical practice which has provided gastroenterology services to patients primarily residing in Herkimer, Madison and Oneida counties for over 20 years. To date, all DDM outpatient endoscopy procedures – totaling over 19,000 in 2008 – have been provided at either St. Elizabeth Medical Center, Oneida Healthcare Center, Faxton-St Lukes Healthcare – Faxton Division or Faxton-St Lukes Healthcare – St. Luke’s Division.
- For several years DDM has been unable to meet the demand for endoscopy procedures from its current patient base. Currently there is a 10-14 week wait for outpatient endoscopy procedures with approximately 500 patients waiting each week – resulting in a backlog of 5,000 -7,000 procedures. DDM has determined that it needs to recruit at least two additional physicians within the next 12 months to service its patient base.
- Establishment of the Center is important for several reasons. First, ownership in the Center will be used as a tool by DDM to recruit additional physicians which will improve the availability of gastroenterology services for residents in the Mohawk Valley area where it is difficult to recruit specialists. Second, the local hospitals do not have sufficient capacity to accommodate DDM’s current outpatient endoscopy volume or the increased volume to be generated by the addition of new physicians. Rather than having one or more of the hospitals build additional capacity, DDM desires to provide that additional capacity by developing the Center. Third, by providing needed outpatient endoscopy capacity, it will also reduce patient wait-times, provide enhanced convenience for patients, improve operating efficiencies and reduce costs to governmental and private payers.

Schedule 1 C - Other Facilities Owned or Controlled by the Applicant

(Establishment Applications only)

Does the applicant or any related entity (parent, member or subsidiary corporation) operate or control any of the following in New York State?

FACILITY TYPE - NEW YORK STATE	FACILITY TYPE CODE	
Hospital	HOS	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Nursing Home	NH	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Diagnostic and Treatment Center	DTC	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Licensed Home Care Services Agency	LHH	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Certified Home Health Agency	CHH	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Hospice	HSP	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Adult Home	ADH	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Assisted Living Program	ALP	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Long Term Home Health Care Program	LTC	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Enriched Housing Program	EHP	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Health Maintenance Organization	HMO	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Other	OTH	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**New York State Department of Health
Certificate of Need Application**

Schedule 1C

For each facility or agency referenced above, enter the name, the PFI and facility type in the chart below.

	FACILITY NAME:	PFI	FACILITY TYPE
1	not applicable		
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			

**New York State Department of Health
Certificate of Need Application**

Schedule 1C

In addition to the information provided on the above chart, provide a complete list of all health care, adult care, behavioral, or mental health facilities, programs or agencies located outside New York State that are affiliated with the applicant corporation, as well as with parent, member and subsidiary corporations. For each health care entity identified, provide the full name, address, and type of services provided. In conjunction with this list, provide documentation from the regulatory agency in the state(s) where affiliations are noted, reflecting that the facilities/programs/agencies have operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of the affiliation, whichever is shorter). To assist you in securing this information, a recommended form and a sample letter of inquiry are provided in Schedule 2 D.

Please list the facilities outside of New York State that are owned or controlled by the applicant:

	FACILITY NAME AND ADDRESS:	Services provided:	STATE/ COUNTRY	FACILITY TYPE
1	not applicable			
2				
3				
4				
5				
6				
7				
8				
9				
10				

**New York State Department of Health
Certificate of Need Application**

Schedule 2 - Worksheet

Table 2A-1 Personal Information Tracking

* Refer to the instructions on Worksheet Pages 1 and 2 to determine who should submit Schedule 2 and then enter the names accordingly on the following worksheet. Attach additional sheets if necessary. Attachment # .

Legal Operator - List Stockholder(s), Officer(s), Director(s), LLC Member(s) or Directors or Manager(s) or Partners(s) Under Each Entity Named	Title or Position That Requires This Individual to Submit Schedule 2	Mark "X" if Required to Submit this Schedule		
		2A	2B	2C
Stanley Weiselberg, M.D.	Owner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Norman Neslin, M.D.	Owner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Pavelock, M.D.	Owner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bradley Sklar, M.D.	Owner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Richard Cherpak, M.D.	Owner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brett Gandhi, M. D.	Owner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Garth Garramone, D.O.	Owner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHEDULES 2C AND 2D ARE NOT APPLICABLE FOR THIS APPLICATION		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* Please note exception for CHHAs on prior pages.

Schedule 2A - Personal Qualifying Information

Name of Individual:

STANLEY P WEISELBERG, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
WEISELBERG		STANLEY		P
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
DIGESTIVE DISEASE MEDICINE OF CNY, LLP 110 BUSINESS PARK DR.				
CITY	STATE	ZIP CODE	TELEPHONE	
UTICA	NY	13502	(315) 624-7000	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
OWNER / PARTNER				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
UNIVERSITY OF PENNSYLVANIA	PHILADELPHIA, PA			BACHELOR OF ARTS	1972
NEW YORK UNIVERSITY SCHOOL OF MEDICINE	NEW YORK, NY			DOCTOR OF MEDICINE	1979

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD / GASTROENTEROLOGY # 143482-1	THE UNIVERSITY OF NYS EXAMINATION DEPARTMENT 89 WASHINGTON AVE ALBANY, NY 12234-1000 EMAIL: DPREG@FREE.MAIL.NYSED.GOV PHONE: (518) 474-3817 EXT: 410		11/30/09

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

N/A **5. Offices Held or Ownership in Health Facilities**

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

N/A a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

111 (c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS. AS SUCH, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT ENDOSCOPY. IN ADDITION, I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF DIGESTIVE DISEASE MEDICINE OF GENERAL NEW YORK, LP AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THAT MONOLAK PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
See enclos ^{ure} /		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

New York State Department of Health
 Certificate of Need Application

Schedule 2A

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

New York State Department of Health
Certificate of Need Application

Schedule 2A

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X <i>Stanley Weiselberg</i>	10/7/09
PRINT OR TYPE NAME	
Stanley Weiselberg MD	
TITLE	

NOTARY	DATE
<i>[Signature]</i>	10/7/09

Has the original of this document been signed and notarized?

Yes

No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/20 10

Curriculum Vitae

STANLEY P. WEISELBERG, M.D.

Business Address: Digestive Disease Medicine
110 Business Park Drive
Utica, NY 13502

PRESENT APPOINTMENTS:

Active Staff; Faxton Hospital, Utica, N.Y.
Active Staff; St. Elizabeth Medical Center, Utica, N.Y.
Active Staff; St. Luke's Memorial Hospital Center, Utica, N.Y.
Courtesy Staff; Oneida Healthcare Center, Oneida, N.Y.
Consulting Staff; Mohawk Valley Psychiatric Center, Utica,
N.Y.

CLINICAL TRAINING:

1982-1984 Fellow in Gastroenterology - New York Medical College:
⊘ Westchester County Medical Center, Valhalla, N.Y.
⊘ Metropolitan Hospital Center, New York, N.Y.
⊘ Lincoln Hospital, Bronx, N.Y.

1980-1982 Resident in Internal Medicine - Lenox Hill Hospital, New York,
N.Y.

1979-1980 Intern in Internal Medicine - Lenox Hill Hospital, New York,
N.Y.

EDUCATION:

New York University School of Medicine, New York, N.Y.
⊘ Doctor of Medicine, 1979

University of Pennsylvania, Philadelphia, PA.

☞ Bachelor of Arts, 1972

ACADEMIC APPOINTMENTS:

1982-1984 Clinical Instructor of Medicine
☞ New York Medical College, Valhalla, N.Y.

BOARDS:

1985 Gastroenterology, American Board of Internal Medicine

1982 Internal Medicine, American Board of Internal Medicine

1980 National Board of Medical Examiners

Continued....

Page 2

Curriculum Vitae

Stanley P. Weiselberg, M. D.

MEMBERSHIP:

- ☞ American Gastroenterological Association
- ☞ American Society of Gastrointestinal Endoscopy
- ☞ American College of Gastroenterology
- ☞ American College of Physicians

LICENSURE: New York State License 143482

FOREIGN LANGUAGES: 

Schedule 2A - Personal Qualifying Information

Name of Individual:

NORMAN R. NESKIN, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
<i>NESKIN</i>		<i>NORMAN</i>		<i>R.</i>
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
<i>INVESTIGATIVE & SURGERY MEDICINE OF CNY, LLP 110 BUSINESS PARK DR.</i>				
CITY	STATE	ZIP CODE	TELEPHONE	
<i>UTICA</i>	<i>NY</i>	<i>13502</i>	<i>(315) 624-7000</i>	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
<i>OWNER - PARTNER</i>				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
<i>VIRGINIA POLYTECHNIC INSTITUTE</i>	<i>BLACKSBURG, VA</i>			<i>COMPLETION OF BIOMEDICAL CO-OP</i>	<i>1978</i>
<i>VIRGINIA POLYTECHNIC INSTITUTE</i>	<i>BLACKSBURG, VA</i>	<i>ENGINEERING BIOMEDICAL ENGR</i>		<i>BS WITH DISTINCTION MECHANICAL</i>	<i>1978</i>
<i>UPSTATE MEDICAL CNTR</i>	<i>SYRACUSE, NY</i>			<i>M.D.</i>	<i>1982</i>

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD/GASTROENTEROLOGY # 157789-1	THE UNIVERSITY OF THE STATE OF NY EDUCATION DEPARTMENT 89 WASHINGTON AVE ALBANY, NY 12234-1000 EMAIL: OPR@OFFICE@MAIL.NYSED.EDU TEL: (518) 474-3817 EXT 410		01/31/2011

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT		FROM	TO
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

NA a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

N/A b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

11/11 (c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS. AS SUCH, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT ENDOSCOPY. IN ADDITION, I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF DIGESTIVE DISORDERS MEDICINE OF CENTRAL NEW YORK, LLP AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THAT MONIACAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
SEE ENCLOSED		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

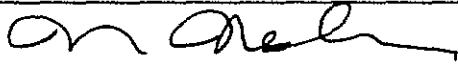
New York State Department of Health
 Certificate of Need Application

Schedule 2A

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

--

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X 	10/15/09
PRINT OR TYPE NAME	
Norman NESLW	
TITLE	

NOTARY	DATE
	10/15/09

Has the original of this document been signed and notarized?

Yes No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/ 20 11

Curriculum Vitae

NORMAN R. NESLIN, M. D.

Date of Birth:

Place of Birth:

Business Address:

Digestive Disease Medicine of Central New York
110 Business Park Drive
Utica, New York 13502
315-624-7000

Family:

Clinical Training:

Clinical/Research Fellow - Gastroenterology
Rhode Island Hospital, Providence, Rhode Island
Brown University Medical School - July 1985 to 1987

Assistant Instructor in Medicine
Brown University Medical School - July 1985 to 1987

Internal Medicine Residency and Internship
SUNY Upstate Medical Center, Syracuse, New York - July 1982 to 1985

Education:

Upstate Medical Center, Syracuse, New York
M. D. - 1982

Virginia Polytechnic Institute, Blacksburg, VA
B.S. with Distinction; Mechanical
Engineering - Biomedical Engineering - 1978

Completion of Biomedical Co-Op Program
Virginia Polytechnic Institute - 1978

Licensure:

New York State - #157789B

Certification:

Diplomate, American Board of Gastroenterology - 1987
Diplomate, American Board of Internal Medicine - 1985

Diplomate, National Board of Medical Examiners - 1982

Societies:

American College of Physicians
American Gastroenterological Association
American College of Gastroenterology
Medical Society of New York
Crohns & Colitis Foundation
Medical Advisor - Central New York Celiac Society

Hospital Appointments:

Active staff at St. Elizabeth Medical Center, Utica, NY
Active staff at Faxton-St. Luke=s Healthcare, Utica, NY
Active staff at Oneida Healthcare Center, Oneida, NY

Research:

Duodenal Ulcer Study - Nightly dosing vs standard treatment
Behavior of Esophageal Smooth Muscle in Response to Esophagitis
Abstract - 1987

Schedule 2A - Personal Qualifying Information

Name of Individual:

ROBERT R. PAVELOCK, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
<i>PAVELOCK</i>		<i>ROBERT</i>		<i>R.</i>
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
<i>INGESTIVE DISEASE MEDICINE OF CNY, LLC 110 BUSINESS PARK DR.</i>				
CITY	STATE	ZIP CODE	TELEPHONE	
<i>UTICA</i>	<i>NY</i>	<i>13502</i>	<i>(315) 624-7000</i>	
DATE OF BIRTH (Month/Day/Year)	PLACE OF BIRTH (County/State)		Social Security #	
[REDACTED]	[REDACTED]		[REDACTED]	
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
<i>OWNER - PARTNER</i>				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
<i>STATE UNIVERSITY OF NY @ STONY BROOK</i>	<i>NEW YORK, NY</i>	<i>1975</i>	<i>1980</i>	<i>BA-ANTHROPOLOGY</i>	<i>1980</i>
<i>NICHOLAS COPERNICUS ACADEMY OF MEDICINE</i>		<i>1980</i>	<i>1984</i>	<i>MD</i>	<i>1984</i>
<i>CARLOW POLAND THROUGH SILNY-STONY BROOK MEDICAL EXCHANGE PROGRAM</i>					

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD/GASTROENTEROLOGY #174776-1	THE UNIVERSITY OF THE STATE OF NY EDUCATION DEPARTMENT TEL: (518) 474-3817 EXT 410 EMAIL: DPREGFREE@MAIL.NYSED.GOV		08/31/2011

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

N/A a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

--	--	--

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

11/11 (c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION? (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS. AS SUCH, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT ENDOSCOPY. IN ADDITION, I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF DIGESTIVE DISEASE MEDICINE OF CENTRAL NEW JERSEY, LLP AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THAT MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

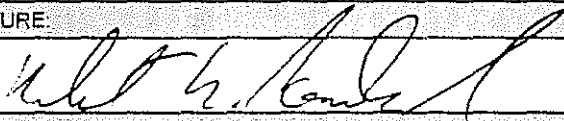
New York State Department of Health
 Certificate of Need Application

Schedule 2A

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

--

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X 	11/11/09
PRINT OR TYPE NAME	
ROBERT PAULLOCK MD	
TITLE	

NOTARY	DATE
	11/11/09

Has the original of this document been signed and notarized? Yes No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/ 20 11

Steven Z. Kussin, M.D., F.A.C.P.
Stanley P. Weiselberg, M.D.
Norman R. Neslin, M.D.
Robert R. Pavelock, M.D.
Bradley F. Sklar, M.D.
Richard M. Cherpak, M.D.
Nancy Furlong, R.N., M.S., A.N.P.
Lisa Sullivan, R.N., M.S.N., C.S.N.P.
Deborah Clarey, R.N., B.A., F.N.P.-C
E. Patricio Onate, R. PA.-C

Curriculum Vitae

Personal Information

ROBERT R. PAVELOCK, M. D.

Date of Birth:

Place of Birth:

Home Address:

Business Address:

Digestive Disease Medicine of Central New York
110 Business Park Drive
Utica, New York 13502
315-624-7000

Marital Status:

Spouse's Name:

Education & Professional Work Experience

1991-present	Digestive Disease Medicine of Central New York
1988-1991	Part-time attending physician Emergency Room, Northport VAMC
1988-1991	Chief Fellow in Gastroenterology/Hepatology University Hospital, SUNY-Stony Brook, NY Northport VAMC, Northport, NY
1986-1988	Residency in Internal Medicine SUNY-Stony Brook University Hospital, Stony Brook, NY Northport VAMC, Northport, NY
1985-1986	Internship in Internal Medicine SUNY-Stony Brook University Hospital, Stony Brook, NY Northport VAMC, Northport, NY

Continued....



DIGESTIVE
DISEASE
MEDICINE
OF CENTRAL NEW YORK, L.L.P.

Page 2

Curriculum Vitae

Robert R. Pavelock, M. D.

- 1984-1985 Clerkships in Endocrinology, Gastroenterology, Pulmonology & Cardiology
VA Medical Center, Northport, NY
- 1980-1984 Nicholas Copernicus Academy of Medicine
Cracow, Poland through SUNY-Stony Brook Medical Exchange Program - M.D.
- 1975-1980 State University of New York at Stony Brook
BA - Anthropology

Licensure

New York - 1987 License Number 174776-1

Board Certified in Internal Medicine - 1990

Board Certified in Gastroenterology - 1993 - Number 121075

Professional Affiliations

Associate - American College of Physicians

Member - American Medical Association

Member - American Gastroenterological Association

Publications & Current Clinical Research

- Accepted for Publication Cheng, EH. Pavelock, R.
Multiple Gastrointestinal Tract Diverticula. Gastrointestinal Radiology, Vol 12, No 4 (1990)
- Project in Progress (principal investigator) Evaluation of Intravenous Antibiotics for the prevention of spontaneous bacterial peritonitis in decompensated cirrhosis with ascites following invasive procedure.

Continued....

Page 3
Curriculum Vitae
Robert R. Pavelock, M. D.

References

Douglas Brand, M. D.
Chief, Division of Gastroenterology
HSC - T16-060
University Hospital
SUNY - Stony Brook, NY 11794

Peter Ells, M. D.
Director, GI Fellowship Program
HSC - T16-060
University Hospital
SUNY - Stony Brook, NY 11794

Stephen E. Steinberg, M. D.
Director, Biliary Lithotripsy Program
HSC - T16-060
University Hospital
SUNY - Stony Brook, NY 11794



New York, NY
Latham, NY
Syracuse, NY
East Meadow, NY
www.mlmic.com

Claims Experience

Report Type: Credentialing

Run Date: 10/1/2009

Claims reported since: 7/1/1975

Reference #: MP0405747

Reporting on: Robert R Pavelock

>>>> No claim files found for this policyholder. <<<<

Codefendant Section

Reporting on: Robert R Pavelock

>>>> No codefendant information found <<<<

Schedule 2A - Personal Qualifying Information

Name of Individual:

BRASLEY F. SKLAR, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
SKLAR		BRASLEY		F
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
DIGESTIVE DISEASE MEDICINE OF CNY, LLC 110 BUSINESS PARK DR.				
CITY	STATE	ZIP CODE	TELEPHONE	
WILKA	NY	13506	(315) 624-7000	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
OWNER - PARTNER				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
HAMILTON COLLEGE	CLINTON, NY			BA Psychobiology	1984
NEW YORK UNIVERSITY SCHOOL OF MEDICINE	NEW YORK, NY			MD	1988

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD / GASTROENTEROLOGY # 179 332-1	THE UNIVERSITY OF THE STATE OF NY EDUCATION DEPARTMENT TEL: (518) 474-3817 EXT 440 EMAIL: OPREG-FEE@MAIL.NYSEA.GOV		08/31/2010

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM:	TO:	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

N/A **5. Offices Held or Ownership in Health Facilities**

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

N/A a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

11/11 (c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS AS SUCH, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT ENDOSCOPY. IN ADDITION, I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF DIGESTIVE DISEASE MEDICINE & GENERAL MEDICINE, LLP AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THAT MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
SEE ENCLOSED CLAIMS TX REPORTS		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

**New York State Department of Health
Certificate of Need Application**

Schedule 2A

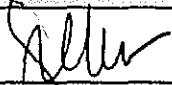
<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If "Yes", provide details below</p>	

New York State Department of Health
Certificate of Need Application

Schedule 2A

--

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X 	11/11/09
PRINT OR TYPE NAME	
BRADLEY SKLAR, MD	
TITLE	

NOTARY	DATE
	11/11/09

Has the original of this document been signed and notarized?

Yes

No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/ 20 10

BRADLEY F. SKLAR, M.D.

Home Address:

[REDACTED]

Business Address:

DDM Office
110 Business Park Drive
Utica, New York 13502
(315) 624-7000
(315) 793-1129 (Fax)

Personal Data:

[REDACTED]

UNDERGRADUATE EDUCATION:

HAMILTON COLLEGE

B.A., 1984, Summa Cum Laude; class rank: 4/411
Major: Psychobiology (Departmental Honors)
Awards: B.F. Skinner Prize for Research in Psychobiology
Dean's List (each semester)

Societies: Phi Beta Kappa
Psi Chi (National Honor Society In Psychology) President
Sigma Xi (Scientific Research Society)

MEDICAL EDUCATION:

NEW YORK UNIVERSITY SCHOOL OF MEDICINE

M.D., 1988
Activities: Chairman-Curriculum Committee Neuroscience, 1986
Chairman-Curriculum Committee Cell Biology, 1985
Volunteer-Stuyvesant Clinic, New York, New York, 1985-1987

NEW YORK UNIVERSITY HONORS PROGRAM, 1986-1988

POST-GRADUATE TRAINING:

NEW YORK UNIVERSITY INTERNAL MEDICINE PROGRAM, July 1988 - 1991

Bellevue Hospital and Tisch Hospital, New York

DIPLOMATE IN INTERNAL MEDICINE, AMERICAN BOARD OF INTERNAL MEDICINE, September 1991

NEW YORK UNIVERSITY - V.A. GASTROENTEROLOGY FELLOWSHIP, July 1991 - 1993

New York V.A. Medical Center and Bellevue Hospital Center

DIPLOMATE IN GASTROENTEROLOGY, AMERICAN BOARD OF INTERNAL MEDICINE, September 1993

Continued....

RESEARCH ACTIVITIES:

1992 - 1993

Clinical Research - Intestinal Permeability

Gastroenterology Department - New York V.A. Medical Center, New York, New York

1989 - 1991

Clinicopathologic Research - Malabsorption

Comparison of the clinical history with the histologic appearance of small bowel mucosa of adults with malabsorption. Department of Surgical Pathology, NYU-Tisch Hospital

1986 - 1988

New York University Honors Program:

Clinical Research - Arm Exercise Stress Testing
Department of Cardiology, Veterans Hospital of Manhattan

1985 - 1986

Clinical Research - Mechanoreception

Dept. of Physiology and Biophysics, New York University
(Results presented at Society of Neuroscience Convention, Washington, D.C.)

1984 - 1985

New York University Honors Program:

Basic Research - Extracellular recording in Somatosensory Cortex in monkeys
Department of Physiology and Biophysics,
New York University

1982 - 1984

Clinical Research - Mechanoreception

Institute for Sensory Research - Syracuse, NY
Department of Psychology, Hamilton College, Clinton, NY

PUBLICATIONS:

Gardner, E.P., Sklar, B.F.: **Discrimination of the Direction of Motion on the Human Hand: A psychophysical study of stimulation parameters.** Journal Neurophysiology, 1994, June; 71(6): 241-29

Weinshel, E.H., Sklar, B.F., Raicht, R.F., Ma, T.Y. and Hollander, D.: **Intestinal Permeability Is Not Increased in HIV Positive Patients** . Gastroenterology, April 1994, Vol. 106, No. 4, Pt. 2, A792 Abstract.

Goodman, S., Rubler, S., Bryk, H., Sklar, B.F. and Glasser, L.: **Arm Exercise Testing with Myocardial Scintigraphy in Asymptomatic Patients with Peripheral Vascular Disease.** Chest, 1989, Apr; 95(4): 740-6

Continued...

Gardner, E., Sklar, B.F.: **Factors Influencing Discrimination of Motion on Human Hand.** Soc. Neurosci Abst., 1986 Vol. 12, Pt 2. 798

Gescheider, G., Sklar, B.F.: **Vibrotactile Forward Masking: Psychophysical Evidence for a Triplex Theory of Cutaneous Mechanoreception.** J. Accust. Soc. Amer. 87(2), Aug. 1985.

CLINICAL/PROFESSIONAL EXPERIENCE:

1993 - present

Digestive Disease Medicine of Central New York
Partner (6 person group) - 100% Gastroenterology
practice

1993 - present

Attending Physician
Faxton Hospital, Utica, New York

1993 - present

Attending Physician
St. Elizabeth Medical Center, Utica, New York

1993 - present

Attending Physician
St. Luke's Memorial Hospital Center, Utica, New York

1993 - present

Attending Physician
Oneida Healthcare Center, Oneida, New York

PROFESSIONAL SOCIETIES:

American Medical Association

American Gastroenterology Association

Medical Society, State of New York

American College of Gastroenterology

Schedule 2A - Personal Qualifying Information

Name of Individual:

RICHARD M. CHERPAK, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
<i>CHERPAK</i>		<i>RICHARD</i>		<i>M.</i>
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
<i>DIGESTIVE DISEASE MEDICINE OF CNY, LLP 110 BUSINESS PARK DRIVE</i>				
CITY	STATE	ZIP CODE	TELEPHONE	
<i>UTICA</i>	<i>NY</i>	<i>13502</i>	<i>(315) 624-7000</i>	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
<i>OWNER - PARTNER</i>				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
<i>CORNELL UNIVERSITY</i>	<i>ITHACA, NY</i>			<i>BA CHEMISTRY</i>	<i>05/84</i>
<i>SUNY @ BROOKLYN ALLANI RESEARCH CENTER</i>	<i>BROOKLYN, NY</i>	<i>1985</i>	<i>1986</i>	<i>RESIDUAL COMPLETE BIOCHEMISTRY</i>	<i>1986</i>
<i>NATIONAL INSTITUTE OF HEALTH RESEARCH FELLOWSHIP</i>				<i>"</i>	<i>1985</i>
<i>STATE UNIVERSITY OF NEW YORK HEALTH SCIENCE CENTER @ BROOKLYN</i>	<i>BROOKLYN, NY</i>			<i>MD</i>	<i>05/88</i>

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD/GASTROENTEROLOGY #185866-1	THE UNIVERSITY OF THE STATE OF NY EDUCATION DEPARTMENT TEL: (518) 474-3817 EXT 410 EMAIL: UPRCB-FEE@MAIL.NYSED.GOV		11/30/2010

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

N/A **5. Offices Held or Ownership in Health Facilities**

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

NA a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

111(c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS. AS SUCH, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT CLINIC. IN ADDITION, I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF DIGESTIVE DISEASE MEDICINE & GENERAL NEW YORK, NY AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THAT MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
SEE ENCLOSED CLAIMS HISTORY		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

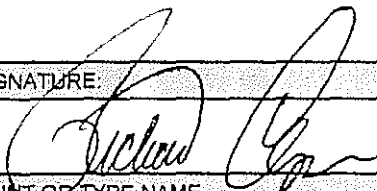
New York State Department of Health
 Certificate of Need Application

Schedule 2A

9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If "Yes", provide details below	

--

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X 	11/14/09
PRINT OR TYPE NAME	
RICHARD CHERPAK, MD	
TITLE	

NOTARY	DATE
	11/14/09

Has the original of this document been signed and notarized? Yes No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/20 10

RICHARD M. CHERPAK, M.D.



PROFESSIONAL EXPERIENCE

Group Practice, 1993–Present

Consultation, Endoscopy including ERCP and Nutritional Support.

Chairman, Endoscopy Committee, Faxton-St. Luke's Hospital, 2003–Present

LICENSURE AND CERTIFICATION

Diplomate American Board of Internal Medicine - Gastroenterology, September 1993, Recertification 2003

Diplomate American Board of Internal Medicine, September 1991, Recertification 2001

Diplomate National Board of Medical Examiners (#364 105), July 1989

New York State Licensure (#185866)

POSTGRADUATE TRAINING

THE LONG ISLAND COLLEGE HOSPITAL, Brooklyn, NY

Gastroenterology Fellowship: July 1991–June 1993

Board Eligible upon completion of fellowship, 1993

STATE UNIVERSITY OF NEW YORK

HEALTH SCIENCE CENTER AT STONY BROOK, Stony Brook, NY

Internal Medicine Residency: July 1988–June 1991

EDUCATION

STATE UNIVERSITY OF NEW YORK

HEALTH SCIENCE CENTER AT BROOKLYN, Brooklyn, NY

M.D., May 1988

Honors:

National Institute of Health Research Fellowship, 1985. Awarded to students for independent research in biochemistry.

S.U.N.Y. Health Science Center at Brooklyn Alumni Research Stipend, 1985–1986. Awarded for research completed in biochemistry.

CORNELL UNIVERSITY, Ithaca, NY

B.A. Chemistry, May 1984

Honors:

Phi Beta Kappa

Alpha Lambda Delta Honor Society

Laubengayer Award - Awarded to outstanding student in advanced chemistry.

Research in Physical Chemistry

Dean's List - 6 Semesters

PROFESSIONAL ORGANIZATIONS

Member, American College Gastroenterology

Member, American Gastroenterology Association

Member, American College Of Physicians

Member, American Medical Association

REFERENCES

Available upon request

Schedule 2A - Personal Qualifying Information

Name of Individual:

BRETT R. GANDHI, MD

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
GANDHI		BRETT		R.
STREET ADDRESS				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]				
BUSINESS NAME AND ADDRESS				
DIGESTIVE DISEASE MEDICINE OF CNY, LLP 110 BUSINESS PARK DRIVE				
CITY	STATE	ZIP CODE	TELEPHONE	
UTICA	NY	13502	(315) 624-7000	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]				
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
OWNER - PARTNER				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
UNIVERSITY OF BOMBAY	BOMBAY, INDIA			BS MICROBIOLOGY	1971
UNIVERSITY OF SOUTHWESTERN LOUISIANA	LAFAYETTE, LOUISIANA			MS MICROBIOLOGY	1976
UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL	CHAPEL HILL, NORTH CAROLINA			MS (EXPERIMENTAL) PATHOLOGY	1984
UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL	CHAPEL HILL, NORTH CAROLINA			MD	1989

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
MD/GASTROENTEROLOGY # 183530-1	THE UNIVERSITY OF THE STATE OF NY EDUCATION ACADEMY TEL: (518) 474-3817 EXT 410 EMAIL: DIRECTOR@CEPHAN.NYSEA.GOV		02/28/2011

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY	STATE	ZIP CODE	
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES:			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

N/A a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

11(c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following Information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS AS SUCH, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPPING AND OPERATIONS OF OUTPATIENT CLINIC(S). IN ADDITION, I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF DIGESTIVE DISEASE MEDICINE AT GENERAL NEW YORK, LLP AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THIS MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
SEE ATTACHED CLAIMS HISTORY		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

New York State Department of Health
 Certificate of Need Application

Schedule 2A


9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:	
a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
f) was denied a certificate of authority or license to do business in any state?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.	
Have you ever been in a position that required a fidelity bond?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Were any claims made against that bond? If "Yes", provide details below	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If "Yes", provide details below	

New York State Department of Health
Certificate of Need Application

Schedule 2A

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The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE:	DATE
X 	11/10/09
PRINT OR TYPE NAME	
BRETT GANDHI	
TITLE	

NOTARY	DATE
	11/13/09

Has the original of this document been signed and notarized? Yes No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/20 13



DIGESTIVE
DISEASE
MEDICINE
OF CENTRAL NEW YORK, LLP

110 Business Park Dr
Utica, NY 13502
(315) 624-7000
FAX (315) 793-1129

301 Genesee St
Oneida, NY 13421
(315) 363-9183
FAX (315) 361-1093

Curriculum Vitae

BRETT R. GANDHI, M.D.

Personal Information

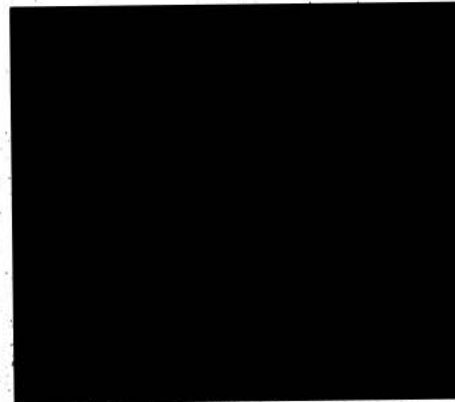
Date of Birth:

Place of Birth:

Citizenship:

Marital Status:

Business Address:



Digestive Disease Medicine of Central New York
110 Business Park Drive
Utica, New York 13502
315-624-7000

Academic Training

1989

M.D.

University of North Carolina at Chapel Hill
Chapel Hill, North Carolina

1984

M.S. in Experimental Pathology

University of North Carolina at Chapel Hill
Chapel Hill, North Carolina

1976

M.S. in Microbiology

University of Southwestern Louisiana
Lafayette, Louisiana

1971

B.S. in Microbiology

University of Bombay
Bombay, India

Licensure

New York State - 183530

New Hampshire - inactive

Continued.....

Steven Z. Kussin, M.D., F.A.C.P. • Stanley P. Welselberg, M.D. • Norman R. Neslin, M.D. • Robert R. Pavelock, M.D.
Bradley F. Sklar, M.D. • Richard M. Cherpak, M.D. • Brett R. Gandhi, M.D. • Garth J. Garramone, D.O.
Nancy Furlong, R.N., M.S., C.S.N.P. • Lisa Sullivan, R.N., M.S., C.S.N.P.
Deborah Clarey, R.N., B.A., F.N.P.-C • E. Patricio Onate, R. P.A.-C

Traineeship

- 1992 - 1994 Fellowship in Gastroenterology
Strong Memorial Hospital, University of Rochester
Rochester, New York
- 1989 - 1992 Residency in Internal Medicine and Primary Care
University of Rochester
Rochester, New York

Board Qualifications

- 1993 American Board of Internal Medicine
- 1998 American Board of Internal Medicine - Gastroenterology
- 2003 American Board of Internal Medicine - Recertification (completed in June 2002)

Appointments

- January 2003 to present Gastroenterology Practice
Digestive Disease Medicine of Central New York
301 Genesee Street
Oneida, New York
- 1999 - 2002 Attending Physician
Digestive Diseases Unit
Bassett Healthcare
1 Atwell Road
Cooperstown, New York
- 1999 New Hampshire Gastroenterology, Inc.
Manchester, New Hampshire
- 1994 - 1998 Center for Gastrointestinal Medicine
Manchester, New Hampshire
- 1985 - 1988 Medical Technologist
Durham County General Hospital
Durham, North Carolina

Continued.....

Page 3
Curriculum Vitae
Brett R. Gandhi, M. D.

Appointments - continued:

1978 - 1985 Research Assistant
University of North Carolina at Chapel Hill
Chapel Hill, North Carolina

Research

Gandhi and Walker: Detection of Rickettsial Antigen in Urine of Experimentally-Infected Guinea Pigs and in Patients Infected with Rickettsia. Student Research Presentation, University of North Carolina, Chapel Hill, North Carolina.

Organizations & Societies

American College of Gastroenterology

American Society for Gastrointestinal Endoscopy

Committees

Blood Transfusion Committee

Operative and Invasive Procedure Committee

Schedule 2A - Personal Qualifying Information

Name of Individual:

GARTH J. GARRAMONE, M.D.

1. Personal Identifying Information

LAST NAME		FIRST NAME		MIDDLE INITIAL
<i>GARRAMONE</i>		<i>GARTH</i>		<i>J</i>
STREET ADDRESS				
[REDACTED]				
CITY	STATE	ZIP CODE	TELEPHONE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
BUSINESS NAME AND ADDRESS				
<i>DIGESTIVE DISEASE MEDICINE OF NY, LLP 110 BUSINESS PARK DRIVE</i>				
CITY	STATE	ZIP CODE	TELEPHONE	
<i>UTICA</i>	<i>NY</i>	<i>13502</i>	<i>(315) 624-7000</i>	
DATE OF BIRTH (Month/Day/Year)		PLACE OF BIRTH (County/State)		Social Security #
[REDACTED]		[REDACTED]		[REDACTED]
CURRENT OR PROPOSED POSITION WITH PROPOSED ORGANIZATION				
<i>OWNER-PARTNER</i>				

2. Formal Education

INSTITUTION	ADDRESS	ATTENDED		DEGREE	DATE RECEIVED
		FROM	TO		
<i>HAMILTON COLLEGE</i>	<i>CLINTON, NY</i>	<i>1988</i>	<i>1990</i>		
<i>UTICA COLLEGE OF SYRACUSE UNIVERSITY</i>	<i>UTICA, NY</i>	<i>1990</i>	<i>1992</i>	<i>B.S. ECONOMICS HUMAN SCIENCES</i>	<i>1992</i>
<i>WILLIAM M. SCHULL COLLEGE OF PODIATRIC MEDICINE</i>	<i>CHICAGO, IL</i>	<i>1992</i>	<i>1993</i>		<i>1993</i>
<i>UNIVERSITY OF NEW ENGLAND COLLEGE OF OSTEOPATHIC MEDICINE</i>	<i>BIDDEFORD, ME</i>	<i>1993</i>	<i>1997</i>	<i>D.O.</i>	<i>1997</i>

3. Licenses Held

Type of Professional License & License Number (Include Specialty)	Institution Granting License (Mailing Address, Phone & E-mail)	Effective Date	Expiration Date
DO/GASTROENTEROLOGY	THE UNIVERSITY OF THE STATE OF NY EDUCATION DEPARTMENT		08/31/2011
# 217231-1	TEL: (518) 474-3817 EXT 440 EMAIL: DPREOFFICE@MAIL.NYSED.EDU		

4. Employment History for the Past 10 Years

Currently Employed Retired

If retired, please specify date of retirement:

Start with MOST RECENT employment and include employment during the last 10 years. A resume or curriculum vitae (CV) may be substituted for this portion of the application but any additional information requested below and not contained in such resume or CV should be added. Please photocopy and attach additional sheets, if necessary.

NAME OF EMPLOYER		TYPE OF BUSINESS	
SEE ATTACHED			
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

NAME OF EMPLOYER		TYPE OF BUSINESS	
STREET ADDRESS OF EMPLOYER			
CITY		STATE	ZIP CODE
DATES OF EMPLOYMENT	FROM	TO	
POSITION/RESPONSIBILITIES			
REASON FOR DEPARTURE			

5. Offices Held or Ownership in Health Facilities

The purpose of this section is to obtain a listing of any affiliations as referenced below with which the owners, officers, directors, controlling persons or partners of the proposed organization have been associated in the past 10 years. Affiliation, for the purposes of this section, includes serving as either a voting officer, director or principal stockholder of any health care, adult care, behavioral or mental health facility, program or agency requiring licensure or certification in New York State. Officerships and directorships in similar facilities or programs outside of New York State must also be disclosed. Include facilities for which applications were previously disapproved or withdrawn.

Provide documentation from the appropriate regulatory agency in the states (other than New York State) where you note affiliations, reflecting that the affiliated facilities, programs and agencies operated in substantial compliance with applicable codes, rules and regulations for the past ten years (or for the period of your affiliation, whichever is shorter). Instructions for the out-of-state review, a sample letter of inquiry and a recommended form are provided in Schedule 2D to assist you in securing this information.

N/A a. Applicant's Offices/Ownership Interests

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

b. Relative's Ownership Interests

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

Name of relative and relationship to the applicant:				
Name:			Relationship:	
From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

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Name of relative and relationship to the applicant:				
Name:			Relationship:	
#From	To	Name of Facility	Address of Facility	Type of Facility
Office Held/Nature of Interest		Name of Licensing Agency		Address of Licensing Agency

N/A (c) Enforcement Actions

During the period of your (or your relative's) affiliation, were any of the facilities subject to an enforcement or administrative action taken by the State regulatory agency due to the facility's violation of applicable laws and regulations? Yes No

If "Yes, Please provide the following information:

NATURE OF VIOLATION
AGENCY OR BODY ENFORCING VIOLATION (Name & Address)

Has the enforcement or administrative action been resolved? Yes No

If "No", provide an explanation

--

d. Affirmative Statement of Qualifications

For individuals who have not previously served as a director/officer nor have had managerial experience with a health facility/agency, please provide in the space below an affirmative statement explaining why you are qualified to operate the proposed facility/agency. This statement should include, but not be limited to, any relevant community/volunteer background and experience.

I AM AN EXPERIENCED GASTROENTEROLOGIST AND AN ACTIVE MEMBER OF THE MEDICAL STAFFS AT THE LOCAL HOSPITALS. AS SUCH, I HAVE HAD INVOLVEMENT WITH THE STAFFING, EQUIPMENT AND OPERATIONS OF OUTPATIENT CLINIC/SWY. IN ADDITION, I AM ACTIVELY INVOLVED IN THE BUSINESS AND OPERATIONS OF DIGESTIVE DISEASE MEDICINE OF GENERAL NEW YORK, LLP AND HAVE BUSINESS EXPERIENCE GAINED FROM THE MANAGEMENT OF THAT MEDICAL PRACTICE.

6. Record of Legal Actions

1) Except for minor traffic violations, have you ever been convicted of, or had a sentence imposed for, a crime?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2) Are there any criminal actions pending against you?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3) Have you ever been named as a defendant in any civil action, including but not limited to malpractice, fraud or breach of fiduciary responsibility?	Yes <input type="checkbox"/> No <input type="checkbox"/>
4) Are there now or have there ever been any civil or administrative actions pending against you involving Medicaid or Medicare issues?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5) Are there now or have there ever been any civil or administrative actions pending against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6) Are there now or have there ever been any insurance arbitration awards against you or any professional/business entity with which you are affiliated?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7) Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

If the answer to any of the above questions is "Yes," complete the section below:

DATE OF ACTION Month/Day/Year	TYPE OF ACTION	LOCATION OF ACTION
PERSONS AND/OR FACILITIES INVOLVED		
GIVE ANY FURTHER DETAILS		
SEE MLMIC CLAIMS HISTORY ATTACHED		

8) Have you ever changed your name or used an alias?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, provide details below:	

New York State Department of Health
 Certificate of Need Application

Schedule 2A

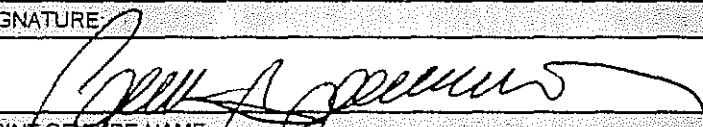
<p>9) During the last 10 years, have you been refused a professional, occupational or vocational license by any public or governmental licensing agency or regulatory authority, or has such a license held by you during such period been suspended, revoked or otherwise subjected to administrative action?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>10) Have you ever been involved in an action or proceeding brought by any public or governmental licensing agency or regulatory authority for violation of any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>11) Have you ever been an officer, director, trustee, member, manager, partner, management employee or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity wherein the company:</p>	
<p>a) became insolvent, declared or was forced to declare bankruptcy or was placed in receivership or conservatorship?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>b) was enjoined from or ordered to cease and desist from violating any securities, insurance or health law or regulation?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>c) was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>d) was required to enter into a Corporate Integrity Agreement as part of a settlement with the Office of Inspector General of the U.S. Department of Health and Human Services?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>e) suffered the suspension or revocation of its certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>f) was denied a certificate of authority or license to do business in any state?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If the answer is "yes" to Questions 9, 10, or 11 attach an explanation, including, where applicable, the date, type, and location of the action, and all relevant details.</p>	
<p>Have you ever been in a position that required a fidelity bond?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Were any claims made against that bond? If "Yes", provide details below</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>Have you ever been denied a fidelity bond or had such fidelity canceled or revoked?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
<p>If "Yes", provide details below</p>	

New York State Department of Health
Certificate of Need Application

Schedule 2A

--

The undersigned hereby certifies, under penalty of perjury, that the above stated information is true, correct and complete.

SIGNATURE	DATE
X 	10/15/09
PRINT OR TYPE NAME	
GARY GALLAMORE	
TITLE	

NOTARY	DATE
	10/15/09

Has the original of this document been signed and notarized?

Yes

No

BRADLEY M. KOWALCZYK
5000286
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 8/10/ 20 10

Curriculum Vitae

Dr. Garth J. Garramone

CURRENT STATUS:

Currently Partner/Owner: Digestive Disease Medicine of Central New York, Utica, NY.
Licensed to practice medicine in the state of New York.
Board certified in Internal Medicine; August of 2000.
Board certified in Gastroenterology; November 2003.

FELLOWSHIP TRAINING:

2000-2003: Fellowship in Gastroenterology at Nassau University Medical Center, East Meadow, NY; major affiliate of SUNY Stony Brook Medical School and Lenox Hill Hospital.

RESIDENCY TRAINING:

1998-2000: Residency in Internal Medicine; University of Massachusetts/Memorial Hospital, Worcester, MA.

1997-1998: Medical Internship; University of Massachusetts/Memorial Hospital, Worcester, MA.

EDUCATIONAL BACKGROUND:

1993-1997: University of New England College of Osteopathic Medicine, Biddeford, ME.: *D.O. Degree.*

1992-1993: William M. Scholl College of Podiatric Medicine, Chicago, IL.

1990-1992: Utica College of Syracuse University, Utica, NY. BS in Human Studies/Economics.

1988-1990: Hamilton College, Clinton, NY.

RESEARCH/PUBLICATIONS:

Papers

Endoscopic Ultrasound Findings in Esophageal Intramural Pseudodiverticulosis. Garth J. Garramone, D.O., David I. Weltman, M.D., Marcio Curvelo, M.D., Carylann Hadjyane, M.D., Crescens Pellecchia, M.D., Ali Karakurum, M.D., Nassau University Medical Center, East Meadow, NY. *Paper Accepted to Gastrointestinal Endoscopy January 2003.*

Poster Presentations

Gastrointestinal Histoplasmosis Involving the Stomach and Colon defining a patient with AIDS.

Garth J. Garramone, DO, Daniel Freese, DO, Carylann Hadjyane, MD, Crescens Pellecchia, MD, Ali Karakurum, MD. Nassau University Medical Center, East Meadow, NY. *Presented at The American College of Gastroenterology 67th Annual Scientific meeting, October 2002. Seattle, Washington.*

Superior Mesenteric Artery Vasculitis as a cause of abdominal pain in a patient with Systemic Lupus Erythematosus.

Garth J. Garramone, DO, Omer Masood, MD, Crescens Pellecchia, MD. Nassau University Medical Center, East Meadow, NY. *Presented at The American College of Gastroenterology 66th Annual Scientific Meeting, October 2001. Las Vegas, Nevada.*

Curriculum vitae pg. 2.
Garth J. Garramone, DO

Poster Presentations-continued

Toxic methemoglobinemia induced by topical benzocaine spray application during endoscopy.

Ali S. Karakurum, MD, Caryllann Hadjiyane, MD, Garth J. Garramone, DO, Imran Zaffer, MD, Crescens Pellecchia, MD.
Nassau University Medical Center, East Meadow, NY. Presented at The American College of Gastroenterology 66th Annual Scientific Meeting, October 2001. Las Vegas, Nevada.

Subhepatic Abscess from a spilled gallstone 2.5 years after laparoscopic cholecystectomy.

Garth J. Garramone, DO, Christopher Elsyad, MD, Caryllann Hadjiyane, MD, Crescens Pellecchia, MD, Ali Karakurum, MD.
Nassau University Medical Center, East Meadow, NY. Presented at The American College of Physicians New York Downstate Scientific Meeting, March 16th, 2002. New York, NY.

Abstracts Published

Endoscopic Ultrasound of Esophageal Intramural Pseudodiverticulosis.

Garth J. Garramone, DO, Chand Mathur, MD, David I. Weltman, MD, Caryllann Hadjiyane, MD
Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology, September 2001, vol. 96, s14.

Hepatic Hydrothorax confirmed by technetium scan before TIPS placement in a cirrhotic patient.

A. Shehata, MD, Garth J. Garramone, DO, Caryllann Hadjiyane, MD, Ali S. Karakurum, MD, Crescens Pellecchia, MD,
Published in The American Journal of Gastroenterology, September 2001, vol. 96, s258.

Superior Mesenteric Artery vasculitis as a cause of abdominal pain in a patient with Systemic Lupus Erythematosus.

Garth J. Garramone, DO, Omer Masood, MD, Crescens Pellecchia, MD. Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology, September 2001, vol. 96, s200.

Subhepatic abscess from a spilled gallstone 2.5 years after laparoscopic cholecystectomy.

Garth J. Garramone, DO, Caryllann Hadjiyane, MD, Ahmed Shehata, MD, Crescens Pellecchia, MD.
Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology September 2001, vol.96, s121.

Toxic methemoglobinemia induced by topical benzocaine application during endoscopy.

Ali S. Karakurum, MD, Caryllann Hadjiyane, MD, Garth J. Garramone, MD, Imran Zaffer, MD, Crescens Pellecchia, MD
Published in The American Journal of Gastroenterology, September 2001, vol. 96, s257.

Awards

2003 FELLOW OF THE YEAR; Nassau University Medical Center, East meadow, LI, NY

ORGANIZATIONS AND COMMITTEES

American College of Gastroenterology

American Gastroenterology Association

Medical Society of Central New York

American College of Physicians

Credentials Committee Faxton-St. Lukes Healthcare 2008

Dysphagia Guidelines Committee Faxton-St. Lukes Healthcare 2005

TEACHING

Lecturer: Critical Care Conference of Central New York; Gastrointestinal Emergencies 2005-2008

Active in teaching Medical Students and Family Practice Residents on their GI rotations with me. Students from UNECOM and St. Elizabeth Family Practice Program.

Guest Lecturer in Central New York Colon Cancer Awareness Program 2009

COMMUNITY/INTERESTS

Sponsor for Upstate Cerebral Palsy

Sponsor/Donations to the House of the Good Sheppard

Sponsor Mohawk Valley Blues Society 2007

Operation Sunshine for under privileged children



CONTINUING MEDICAL EDUCATION

Currently enrolled in the ABIM continuing medical education and board recertification program. 120 CME credits.

2009: Practical Reviews in Gastroenterology. 30 CME credits.

2008: ACG Annual PostGraduate course and Meeting. Orlando, FL.. 16 CME credits.

2007: ACG Annual Post Graduate course and Meeting, Philadelphia, PA. 16 CME credits.

2002: ACG Annual PostGraduate course and Board Review. Seattle, WA. 16 CME credits.

2001: ACG Annual PostGraduate course and Board Review. Las Vegas, NV. 16 CME credits.

2007: MKSAP 13-90 CME credits.

2008: Mayo Clinic Gastroenterology and Hepatology Board Review. 29.5 CME credits.

2007: ACG update and recertification course. 4 CME credits.

2005-2008: Practical Reviews in Gastroenterology/CME only. 57 CME credits.

2005: MLMIC Risk Management Course. 6 CME credits.

2005-2007: UptoDate. 24.25 CME credits.

2001: Update in Gastroenterology, Hepatology and Nutrition. 18th Annual Course, Columbia Presbyterian Hospital. 16 CME credits.

2002: Recent Advances in HCV therapy: A Specialists Perspective. Garden City, NY. 6 CME credits.

2002: William Steinberg Board Review Course in Gastroenterology. Arlington, Virginia. 29 CME credits.

2002: New York Society for Gastrointestinal Endoscopy Hands-On Course in Endoscopy. New York, New York. 6 CME credits.

2003: Endoscopic Workshop in Therapeutic and Diagnostic ERCP. New York, New York. 6 CME credits.

Schedule 3B – Basic Legal Information and Documentation

Instructions:

1. The following applicants must complete Part I in its entirety:
 - a. All Article 7 applicants.
 - b. Article 28 applicants seeking establishment or combined establishment and construction approval.
 - c. Article 36 applicants seeking establishment approval.
 - d. Article 40 applicants seeking establishment approval.

2. The appropriate section of Part II must also be completed, depending on the applicant's type of legal entity, as follows:
 - a. Applicants that are sole proprietors must complete Section A.
 - b. Applicants that are general partnerships must complete Section B.
 - c. Applicants that are registered limited liability partnerships must complete Section C.
 - d. Applicants that are not-for-profit corporations must complete Section D.
 - e. Applicants that are business corporations must complete Section E
 - f. Applicants that are limited liability companies must complete Section F.

3. All Article 28 applicants must complete Part III in its entirety.

N.B.: Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.

I. All Applicants

- A. Is the name of the facility different from the name of the applicant's legal entity?
 Yes No

If yes, submit the Certificate of Assumed Name. Attachment #1.

- B. Is the applicant a natural person? Yes No

If no, type of legal entity:

- Sole Proprietor (See II.A. below)
 General Partnership (See II.B below)
 Registered Limited Liability Partnership (See II.C below)
 Not-for-Profit Corporation (See II.D below)
 Business Corporation (See II.E below)
 Limited Liability Company (See II.F below)
 Other, specify .

- C. For Article 36 applicants only: Does the applicant have any partners, members or stockholders that are not natural persons?
 Yes No

If yes, the applicant must comply with the requirements of PHL 3611.

- D. For Article 36 business corporations only: Is the corporation publicly traded?
 Yes No

If yes, submit the most recently filed Securities Exchange Commission Form 10K.
 Attachment #

E. Submit documentation of how the applicant has or will obtain site control. Lease agreements for Article 28 facilities, and for hospice residences and the inpatient components of Article 40 facilities, must contain the language set forth in 10 NYCRR 600.2(d) or 790.2(d), respectively. Attachment # 2 (Lease Agreement).

F. Are any of the directors or owners (partners, stockholders or members) of the applicant physicians who are in a position to make referrals to the facility?
 Yes No

If yes, submit a signed statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.
 Attachment # 3 (Anti-Kickback Statement).

G. Submit an organizational chart showing the applicant's legal structure.
 Attachment # 4 (Organizational Chart).

H. Does the applicant intend to enter into any agreement(s) involving the management, administrative, billing and/or consulting services for the facility, including, but not limited to, operational policies.
 Yes No

If yes, submit the proposed agreement(s) and the remaining questions in this part I.
 Attachment #

If no, skip to Part II as applicable.

I. Has the proposed management entity previously received establishment approval under either Article 7, 28, 36 or 40 of the PHL?
 Yes No

J. Enter on the following chart, the addresses of the facilities/agencies owned, operated or managed by the proposed management entity and the time period that each was owned, operated or managed by the proposed management entity. Include out-of-state entities. Attach additional sheets, if necessary.
 Attachment # N/A.

Facility Name	Type of Facility	Facility Address	Time Period Owned or Managed

K. For each facility named in Question J above, documentation must be submitted reflecting its current and past compliance with the applicable regulations in the state in which it operates. This information is required for the most recent ten-year period, or for the period it was owned, operated or managed by the proposed management entity, whichever is less. See Schedule 2D for instructions on how to acquire this documentation.

- L. Has the proposed management entity been the subject of an administrative action related to the ownership, operation or management of any health care facility or agency?
 Yes No

If yes, provide further details regarding the administrative action in the space below.

- M. Are there any criminal actions pending against the proposed management entity?
 Yes No

If yes, provide further details regarding the criminal action in the space below.

- N. Are there now or have there been any civil or administrative actions initiated by either the Medicare or Medicaid programs against the proposed management entity?
 Yes No

If yes, provide further details regarding the administrative action in the space below.

II. Additional Documentation Depending on Type of Legal Entity

Submit the following legal documentation as applicable for the applicant's type of legal entity.

A. Sole Proprietors

1. Name of Individual Proprietor:

2. Certificate of Doing Business: Attachment # .

3. Schedules 2A and 2B

B. General Partnerships

1. On the following chart, list the partners, partnership interest and percentage ownership for each partner. Attach additional sheets if necessary.
 Attachment # .

Partner Name	Partnership Interest	Percentage Ownership

2. Partnership Agreement: Attachment # .
3. Certificate of Doing Business as a Partnership: Attachment # .
4. Schedules 2A and 2B for each partner

N.B. Partnership agreements for Article 28, Article 36 and Article 40 applicants must contain the language set forth in 10 NYCRR 600.1(5)(ii), 760.2 (c)(2) or 790.1 (c)(2), respectively. Refer to Schedule 12B, Part II for language that must be included in partnership agreements for Article 7 general partnerships.

C. Registered Limited Liability Partnerships

1. On the following chart, list the partners, partnership interest and percentage ownership for each partner: Attach additional sheets if necessary. Attachment # .

Partner Name	Partnership Interest	Percentage Ownership

2. Partnership Agreement: Attachment # .
3. Certificate of Doing Business as a Partnership: Attachment # .
4. Certificate of Registration: Attachment # .
5. Schedules 2A and 2B for each partner

N.B. Registered limited liability partnerships are not a proper entity for adult care facilities. See 600.1(5)(ii) of 10 NYCRR for language that must be included in partnership agreements for Article 28 registered limited liability partnerships.

D. Not-for-Profit Corporations

1. Does the corporation have any members? Yes No

If yes, list the names of the members below.

2. On the following chart, list the names of the officers and directors of the applicant corporation and indicate the position held by each. Attach additional sheets if necessary. Attachment # .

Officer/Director Name	Position Held

3. Certificate of Incorporation: Attachment # .
4. Bylaws: Attachment # .
5. If the applicant is not a New York corporation, Application for Authority to Do Business in New York: Attachment # .
6. Schedule 2A for each director
7. Schedule 2B for directors who contribute capital in support of the project
8. Schedule 2C for directors who do not contribute capital in support of the project

E. Business Corporations

1. On the following chart, list the stockholders, stock interest and percentage of ownership for each stockholder. Attach additional sheets if necessary. Attachment # .

Stockholder Name	Stock Interest	Percentage Ownership

2. On the following chart, list the names of the officers and directors of the applicant corporation and indicate the position held by each. Attach additional sheets if necessary. Attachment # .

Officer/Director Name	Position Held

3. Certificate of Incorporation: Attachment # .
4. Bylaws: Attachment # .
5. If the applicant is not a New York corporation, Application for Authority to Do Business in New York: Attachment # .
6. Schedule 2A for each officer, director and stockholder
7. Schedule 2B for each stockholder

N.B. Only stockholders who own ten percent or more of a certified home health agency's issued stock must submit Schedule 2B. Stockholders of all other applicants, regardless of percentage ownership, must submit Schedule 2B.

F. Limited Liability Companies

1. On the following chart, list the members, membership interest and percentage of ownership for each member. Attach additional sheets if necessary.
 Attachment # .

Member Name	Membership Interest	Percentage Ownership
Stanley P. Weiselberg, M.D.	100 Units	14.2857%
Norman R. Neslin, M.D.	100 Units	14.2857%
Robert R. Pavelock, M.D.	100 Units	14.2857%
Bradley F. Sklar, M.D.	100 Units	14.2857%
Richard Cherpak, M.D.	100 Units	14.2857%
Garth J. Garramone, D.O.	100 Units	14.2857%
Brett Gandhi, M.D.	100 Units	14.2857%

2. List the managers below.

None; the Applicant is member-managed

3. Articles of Organization: Attachment # 5 (current Articles of Organization and a form of Amended and Restated Articles of Organization to be filed upon issuance of a CON).
4. Operating Agreement: Attachment # 6 (current Operating Agreement and a form of Amended and Restated Operating Agreement to take effect upon issuance of a CON).

5. If the applicant is not a New York limited liability company, Application for Authority to Do Business in New York: Attachment #N/A.
6. Schedule 2A for each member and manager
7. Schedule 2B for each member

N.B. Only members who own ten percent or more of a CHHA's membership interest must submit Schedule 2B. Members of all other applicants, regardless of percentage of ownership, must submit Schedule 2B.

III. Representative Governance

A. Ownership

1. Is the applicant, or any of its owners, employed by, an owner, officer, director, or manager of, or in any way affiliated with, or acting on behalf, or for the benefit of, an outside entity which will be involved with (including through a lease, contract or agreement), or benefit from, the ownership or operation of the proposed facility?
 Yes No

If yes, in the space below, identify the outside entity and the nature of the relationship.

The Members own 116 Business Park Associates, LLC which will lease space in the 116 Business Park building to the Applicant for the surgery center.

2. Are there any contractual restrictions, existing or proposed, on the ability of the owners of the applicant to assign, transfer or sell their ownership interests or voting rights in the applicant? Yes No

If yes, provide copies of the existing or proposed arrangements.
Attachment #See Attachment 6.

B. Consulting/Administrative Agreements

1. Does this proposal include a consulting or administrative agreement?
 Yes No

If no, skip to Section C.

If yes, attach a copy of this agreement (if not already submitted with the CON), and continue with the questions in this section.
Attachment #.

2. Describe in the space below the services to be provided under the agreement.

3. Describe in the space below the relationship between the applicant/operator and the consultant.

4. Who/what owns the consultant entity?

5. Who will manage the subject facility on a day-to-day business?

6. Who employs the facility manager?

7. Will there be any subcontracts or assignments with other entities?

Yes No

If yes, attach copies of the agreements. Attachment # .

Describe the agreements:

8. What percentage of facility revenues flow to the consultant?

%

9. Is the consultant also an equipment lessor for the facility?

Yes No

10. Is the consultant a real property lessor for the facility?

Yes No

11. Who is responsible for financial decisions and by whom is this person is employed?

C. Financing

Will another entity provide financing for this CON project?

Yes No

If yes, define the lender and it relationship to the applicant and consultant.

The Applicant will obtain financing from a commercial bank in an arms-length financing transaction. There are no other relationships between the Applicant and the lender .

Completed by:

Enter Name:

Garth J. Garramone, DO

New York State Department of Health
Certificate of Need Application

Schedule 3B

November 6, 2009

SCHEDULE 3B ATTACHMENTS

Complete the section labeled "All Applicants." Then, check the box(es) that apply to your organizational structure and enter the corresponding information for each attached document. If the document is not applicable, enter "N/A" in the column labeled "Attachment Title."

DOCUMENT	ATTACHMENT TITLE	ATTACH #	ELECTRONIC FILE NAME*
ALL APPLICANTS			
Certificate of Assumed Name		1	
Form SEC 10K	NA		
Documentation of Site Control		2	
Anti-Kickback Statement		3	
Organizational Chart		4	
Management Agreement	NA		
List of Out-of-State Entities	NA		
<input type="checkbox"/> SOLE PROPRIETORS			
Certificate of Doing Business			
<input type="checkbox"/> GENERAL PARTNERSHIPS			
List of Additional Partners			
Partnership Agreement			
Certificate of Doing Business as a Partnership			
<input type="checkbox"/> REGISTERED LIMITED LIABILITY PARTNERSHIPS			
List of Additional Partners			
Partnership Agreement			
Certificate of Doing Business as a Partnership			
Certificate of Registration			
<input type="checkbox"/> NOT-FOR-PROFIT CORPORATIONS			
List of Additional Officers & Directors			
Certificate of Incorporation			
Bylaws			
Application for Authority to do Business in NYS			

* PDF Format Preferred

SCHEDULE 3B ATTACHMENTS (continued)

DOCUMENT	ATTACHMENT TITLE	ATTACH #	ELECTRONIC FILE NAME*
<input type="checkbox"/> BUSINESS CORPORATIONS			
List of Additional Stockholders			
List of Additional Officers & Directors			
Certificate of Incorporation			
Bylaws			
Application for Authority to do Business in NYS			
<input checked="" type="checkbox"/> LIMITED LIABILITY COMPANIES			
List of Additional Members	NA		
Articles of Organization		5	
Operating Agreement		6	
Application for Authority to do Business in NYS	NA		
<input checked="" type="checkbox"/> REPRESENTATIVE GOVERNANCE			
Restrictions on Ability of Applicant to Assign Ownership	See Attachment 6		
Consulting/Administrative Agreement	NA		
Subcontracts or Assignments with Other Entities	NA		
OTHER ATTACHMENTS (SPECIFY)			

* PDF Format Preferred

Working Capital Financing Plan

1. Working Capital Financing Plan and Pro Forma Balance Sheet:

This section should be completed in conjunction with the monthly Cash Flow. The general guidelines for working capital requirements are two months of first year expenses for changes of ownership and two months' of third year expenses for construction projects. Any deviation from these guidelines must be supported by the monthly cash flow analysis. If working capital is required for the project, all sources of working capital must be indicated clearly. Borrowed funds are limited to 50% of total working capital requirements. If borrowed funds are a source of working capital, please summarize the terms below, and attach a letter of interest from the intended source of funds, to include an estimate of the principal, term, interest rate and payout period being considered. Also, describe and document the source(s) of working capital equity.

List Titles of Attachments related to Borrowed Funds	List Filenames of Attachments
Attachment 7: Bank Letter of Interest	N/A

In the section below, briefly describe and document the source(s) of working capital equity

The total amount of working capital needed based on two months of third year expenses is \$506,405. Fifty percent of the working capital requirement will be borrowed from a bank using a line of credit with an estimated interest rate of 6.75%.

The project owners will each contribute funds for the remaining 50 percent, proportional to their ownership of the ASC. Detailed information on contribution by individual owner can be found in Attachment 10, Sources of Cash.

2. Pro Forma Balance Sheet

This section should be completed for all new establishment and change in ownership applications. On a separate attachment identified below, provide a pro forma (opening day) balance sheet. If the operation and real estate are to be owned by separate entities, provide a pro forma balance sheet for each entity. Fully identify all assumptions used in preparation of the pro forma balance sheet. If the pro forma balance sheet(s) is submitted in conjunction with a change in ownership application, on a line-by-line basis, provide a comparison between the submitted pro forma balance sheet(s), the most recently available facility certified financial statements and the transfer agreement. Fully explain and document all assumptions.

List Titles of Attachments Related to Pro Forma Balance Sheets	List Filenames of Attachments
Attachment 8: Pro Forma Balance Sheet	N/A

New York State Department of Health Certificate of Need Application

Schedule 6

Architectural Submission

This Schedule applies to projects with construction, including Articles- 28, 36 & 40, i.e., Hospitals, D&TCs, RHCfs, CHHAs, LTHHCPs and Hospices.

Instructions: Attachments should be saved or scanned as PDF documents. Most scanners will create this format. The PDF document should be assigned a unique name, so it will not be confused with any other attachment. The title of the attachment, and name of the attached PDF file should be entered in the table below.

Subject of attachment:		Title of Attachment	Filename of attachment - PDF format preferred.
	Example: - attachment in PDF format	Architecture Attachment A	Architecture_attach_A.pdf
A.	Functional space program/analysis for this project. (Required for all construction projects):	Attachment A Architectural Submission	
B.	Architectural narrative that delineates the project scope of the work to meet the determined program needs.	Attachment A Architectural Submission	
C.	Conceptual drawings that complement the architectural narrative.	Attachment A Architectural Submission	
D.	Architect's or Engineer's Letter of Certification for Proposed Construction.	Attachment A Architectural Submission	
E.	Does the project involve Radiation producing equipment?		
	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
	If yes, a Physicist's Report and drawings must be attached.		

Environmental Assessment

Part I.

The following questions help determine whether the project is "significant" from an environmental standpoint.

1.	If this application involves establishment, will it involve more than a change of name or ownership only, or a transfer of stock or partnership or membership interests only, or the conversion of existing beds to the same or lesser number of a different level of care beds?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
2.	Does this plan involve construction and change land use or density?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
3.	Does this plan involve construction and have a permanent effect on the environment if temporary land use is involved?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
4.	Does this plan involve construction and require work related to the disposition of asbestos?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

Part II.

If any question in Part I is answered "yes" the project may be significant and Part II must be completed. If all questions in Part II are answered "no" it is likely that the project is not significant.

1.	Does the project involve physical alteration of ten acres or more?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
2.	If an expansion of an existing facility, is the area physically altered by the facility expanding by more than 50% and is the total existing and proposed altered area ten acres or more?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
3.	Will the project involve use of ground or surface water or discharge of wastewater to ground or surface water in excess of 2,000,000 gallons per day?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
4.	If an expansion of an existing facility, will use of ground or surface water or discharge of wastewater by the facility increase by more than 50% and exceed 2,000,000 gallons per day?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
5.	Will the project involve parking for 1,000 vehicles or more?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
6.	If an expansion of an existing facility, will the project involve a 50% or greater increase in parking spaces and will total parking exceed 1000 vehicles?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
7.	In a city, town, or village of 150,000 population or fewer, will the project entail more than 100,000 square feet of gross floor area?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
8.	If an expansion of an existing facility in a city, town, or village of 150,000 population or fewer, will the project expand existing floor space by more than 50% so that gross floor area exceeds 100,000 square feet?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
9.	If an expansion of an existing facility in a city, town, or village of more than 150,000 population, will the project entail more than 240,000 square feet of gross floor area?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

10.	If an expansion of an existing facility in a city, town, or village of more than 150,000 population, will the project expand existing floor space by more than 50% so that gross floor area exceeds 240,000 square feet?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
11.	In a locality without any zoning regulation about height, will the project contain any structure exceeding 100 feet above the original ground area?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
12.	Is the project wholly or partially within an agricultural district certified pursuant to Agriculture and Markets Law Article 25, Section 303?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
13.	Will the project significantly affect drainage flow on adjacent sites?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
14.	Will the project affect any threatened or endangered plants or animal species?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
15.	Will the project result in a major adverse effect on air quality?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
16.	Will the project have a major effect on visual character of the community or scenic views or vistas known to be important to the community?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
17.	Will the project result in major traffic problems or have a major effect on existing transportation systems?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
18.	Will the project regularly cause objectionable odors, noise, glare, vibration, or electrical disturbance as a result of the project's operation?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
19.	Will the project have any adverse impact on health or safety?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
20.	Will the project affect the existing community by directly causing a growth in permanent population of more than five percent over a one-year period or have a major negative effect on the character of the community or neighborhood?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
21.	Is the project wholly or partially within, or is it contiguous to any facility or site listed on the National Register of Historic Places, or any historic building, structure, or site, or prehistoric site, that has been proposed by the Committee on the Registers for consideration by the New York State Board on Historic Preservation for recommendation to the State Historic Officer for nomination for inclusion in said National Register?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
22.	Will the project cause a beneficial or adverse effect on property listed on the National or State Register of Historic Places or on property which is determined to be eligible for listing on the State Register of Historic Places by the Commissioner of Parks, Recreation, and Historic Preservation?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
23.	Is this project within the Coastal Zone as defined in Executive Law, Article 42?	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

Part III.

Must be completed if any question on Part II was answered "Yes".

1. List all other state or local agencies involved in approval of the project:	
NONE	
2. Has any other agency made an environmental review of this project? If so, give name	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
3. Is there a public controversy concerning environmental aspects of this project? If yes, briefly describe the controversy in the space below.	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

**New York State Department of Health
 Certificate of Need Application
 Schedule 8A Summarized Project Cost and Construction Dates**

This schedule is required for all Establishment Applications and Full or Administrative Review Construction Applications.

1.) Project Cost Summary data:

	Total	Source
Project Description:		
Project Cost	\$1,629,992	Schedule 8a or 8b, column C, line 8
Total Basic Cost of Construction	\$1,629,992	from Schedule 8a or 8b column C, line 6
Total Cost of Moveable Equipment	\$1,589,992	Schedule 8a or 8b, column C, line 5.1
Cost/Per Square Foot for New Construction (calculated on Table 10)	Not Applicable	Schedule 10
Cost/Per Square Foot for Renovation Construction	Not Applicable	Schedule 10
Total Incremental Operating Cost (From Schedule 13C, 17C, or 19D)	\$2,690,838	Schedule 13c, 17c or 19d
Amount Financed (as \$)	\$1,476,861	Schedule 9
Percentage Financed as % of Total Cost (From Schedule 9)	90%	from Schedule 9
Depreciation Life (in years)	7 (equipment)	

2) Construction Dates

Anticipated Start Date	N/A	from Schedule 8b,
Anticipated Completion Date	N/A	

New York State Department of Health

Certificate of Need Application

Schedule 8B - Total Project Cost - For Projects without Subprojects.

For Article 28, 36, and 40 Establishment & Construction Requiring Full, Administrative or Limited Review
 For Limited Review, escalation amounts may be entered as "0".

Constants:	Value	Comments:
Design Contingency - New Construction	%	Normally 10%
Construction Contingency - New Construction	0.00%	Normally 5%
Design Contingency - Renovation Work	10.00%	Normally 10%
Construction Contingency - Renovation Work	10.00%	Normally 10%
Construction Start Date:		as mm/dd/yyyy
Midpoint of Construction Date		as mm/dd/yyyy
Completion of Construction Date		as mm/dd/yyyy
Year used to compute Current Dollars:	2009	

Subject of attachment:	Attachment Number	Filename of attachment -
For new construction and addition, at the schematic stage the design contingency will be normally be 10% and the construction contingency will be 5%. If your percentages are otherwise, please explain in an attachment	N/A	
For renovation, the design contingency will normally be 10% and the construction contingency will be 10%. If your percentages are otherwise, please explain in an attachment	N/A	

New York State Department of Health
 Certificate of Need Application
 Schedule 8B - Total Project Cost - For Projects without Subprojects.

Item	A Project Cost in Current Dollars	B Escalation amount to Mid-point of Construction	C Estimated Project Costs
Source:	Schedule 10 Col. 7	Computed by applicant	(A + B)
1.1 Land Acquisition	\$0		\$0
1.2 Building Acquisition	\$0		\$0
2.1 New Construction	\$0	\$0	\$0
2.2 Renovation & Demolition	\$0	\$0	\$0
2.3 Site Development	\$0	\$0	\$0
2.4 Temporary Utilities	\$0	\$0	\$0
2.5 Asbestos Abatement or Removal	\$0	\$0	\$0
3.1 Design Contingency	\$0	\$0	\$0
3.2 Construction Contingency	\$0	\$0	\$0
4.1 Fixed Equipment (NIC)	\$0	\$0	\$0
4.2 Planning Consultant Fees	\$40,000	\$0	\$40,000
4.3 Architect/Engineering Fees	\$0	\$0	\$0
4.4 Construction Manager Fees	\$0	\$0	\$0
4.5 Other Fees (Consultant, etc.)	\$0	\$0	\$0
Subtotal (Total 1.1 thru 4.5)	\$40,000	\$0	\$40,000
5.1 Movable Equipment (from Sched 11)	\$1,589,992	\$0	\$1,589,992
5.2 Telecommunications	\$0	\$0	\$0
6. Total Basic Cost of Construction (total 1.1 thru 5)	\$1,629,992	\$0	\$1,629,992
7.1 Financing Costs (Points etc)	\$0		\$0
7.2 Interim Interest Expense:: \$ <input type="text"/> %	\$0		\$0
8. Total Project Cost: w/o CON fees - Total 6 thru 7.2	\$1,629,992	\$0	\$1,629,992
Application fees:			
9.1 Application Fee \$2,000	\$2,000		\$2,000
9.2 Additional Processing Fee for Article 28 projects involving Construction. (.0055 x line 8) D&TC	\$8,965		\$8,965
10 Total Project Cost with CON fees	\$1,640,957	\$0	\$1,640,957

Schedule 9 Proposed Plan for Project Financing

I. Summary of Proposed Financial Plan:

Check all that apply and fill in corresponding amounts.

	Type	Amount
	A. Lease	
X	B. Cash	\$ 164,096
	C. Land	
	D. Other	
X	E. Mortgage, Notes, or Bonds	\$ 1,476,861
	F. Refinancing	
	Total Mortgage / Notes / Bonds plus Refinancing (E + F)	\$ 1,476,861
	Total Project Financing (Sum A to F)	\$ 1,640,957

II. Details

A. Leases

	Not Applicable	Title of Attachment
1. List each lease with corresponding cost as if purchased each leased item. Breakdown each lease by total project cost and subproject costs, if applicable.	X	
2. Attach a copy of the proposed lease(s).	X	
3. Submit an affidavit indicating any business or family relationships between principals of the landlord and tenant	X	
4. If applicable, provide a copy of the lease assignment agreement and the Landlord's consent to the proposed lease assignment	X	
5. If applicable, identify separately the total square footage to be occupied by the Article 28 facility and the total square footage of the building	X	
6. Attach two letters from independent realtors verifying square footage rate.		#9 Realtor Letters
7. For all capital leases as defined by FASB Statement No. 13, "Accounting for Leases", provide the net present value of the monthly, quarterly or annual lease payments.	X	

B. Cash

Type	Amount
Accumulated Funds	
Sale of Existing Assets	
Gifts (fundraising program)	
Government Grants	
Other: Initial Owner Equity	\$ -
TOTAL CASH	\$ -

	Not Applicable	
1. Provide a breakdown of the sources of cash. See sample table above.		#10, Sources of Cash
2. Attach a copy of the latest certified financial statement and interim monthly or quarterly financial reports to cover the balance of time to date.	X	
3. If amounts are listed in "Accumulated Funds" provide cross-reference to certified financial statement or Schedule 2b, if applicable.	X	
4. Attach a full and complete description of the assets to be sold, if applicable.	X	
5. If amounts are listed in "Gifts (fundraising program)": • Provide a breakdown of total amount expected, amount already raised, and any terms and conditions affixed to pledges. • If a professional fundraiser has been engaged, submit fundraiser's contract and fundraising plan. • Provide a history of recent fund drives, including amount pledged and amount collected	X	
6. If amounts are listed in "Government Grants": • List the grant programs which are to provide the funds with corresponding amounts. Include the date the application was submitted. • Provide documentation of eligibility for the funds. • Attach the name and telephone number of the contact person at the awarding Agency(ies).	X	
7. If amounts are listed in "Other" attach a description of the source of financial support and documentation of its availability.		
8. Current Department policy requires a minimum equity contribution of 10% of total project cost (Schedule 8b line 10).		

C. Mortgage, Notes, or Bonds -- Not required for limited review

1. Provide a breakdown of the terms of the mortgage. See sample table below.

	Total Project	Units
Interest	N/A	%
Term	N/A	Years
Payout Period	N/A	Years
Principal	N/A	\$

	Not Applicable	Title of Attachment
2. Attach a copy of a letter of interest from the intended source of permanent financing that indicates principal, interest, term, and payout period.		#7, Bank Letter of Interest
3. If New York State Dormitory Authority (DASNY) financing, then attach a copy of a letter from a mortgage banker.	X	
4. If the financing of this project becomes part of a larger overall financing, then a new business plan inclusive of a feasibility package for the overall financing will be required for DOH review prior to proceeding with the combined financing.	X	

D. Land -- Not required for limited review

NOT APPLICABLE

E. Other -- Not required for limited review

NOT APPLICABLE

F. Refinancing -- Not required for limited review

NOT APPLICABLE

**New York State Department of Health
 Certificate of Need Application
 Schedule 10 - Space & Construction Cost Distribution**

For Article 28, 36, and 40 Construction Projects Requiring Full, Administrative or Limited Review * Codes for completing this table are found in Schedule 10 lookups sheet.(see tab below)

Indicate if this project is: New Construction: Renovation:

Location				Functional Code	Description of Functional Code (enter Functional code in Column D, description appears here automatically)	Functional Gross SF	Construction cost per SF	Total construction cost	Alterations, Scope of work
Sub project	Building	Floor	section						
		2		402	Ambulatory Surgery	11436	N/A	N/A	
Totals for Whole Project:						11436	0	0	


**New York State Department of Health
 Certificate of Need Application
 Schedule 10 - Space & Construction Cost Distribution**

If additional sheets are necessary, go to the toolbar, select "Edit", select "Move or copy sheet", make sure the "create a copy" box is checked, and select this document as the destination for the copy then select "OK". An additional worksheet will be added to this spreadsheet

1. If New Construction is Involved, is it "freestanding?"	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
---	---------------------------------	---

	Dense Urban	Other metropolitan or suburban	Rural
2. Check the box that best describes the location of the facilities affected by this project:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The section below must be filled out and signed by the applicant, applicant's representative, project architect, project engineer or project estimator.engineer,

SIGNATURE			DATE	
			11/6/2009	
PRINT NAME		TITLE		
Ted Kondzielawa		Administrator		
NAME OF FIRM				
Mohawk Valley EC, L.L. C.				
STREET & NUMBER				
117 Business Parl Drive c/o Digestive Disease Medicine				
CITY	STATE	ZIP	PHONE NUMBER	
Utica	NY	13502	315-793-1179	

**New York State Department of Health
Certificate of Need Application
Schedule 11 - Moveable Equipment**

For Article 28, 36, and 40 Construction Projects Requiring Full or Administrative Review *

Table I: New Equipment Description

Sub project Number	Functional Code	Description, including model, manufacturer, year of manufacturer where applicable.	Number of units	Unit Cost	Purchase Price
	Waiting/Reception	Chairs	25	\$ 375	\$9,375
		End Tables	4	\$ 250	\$1,000
	Prep Area	Side Tables	4	\$ 145	\$580
		Visit Chair	4	\$ 95	\$380
		BP Portable	2	\$ 25	\$50
		Stethoscopes	3	\$ 5	\$15
	Procedure Rooms	CV-180 EVIS EXERA II Video System Center	4	\$ 21,150	\$84,600
		CLV-180 EVIS EXERA II Light Source	4	\$ 12,060	\$48,240
		CF-H180AL Video Colonoscope	12	\$ 36,000	\$432,000
		PCF-H180AL ultra slim Video Colonoscope	4	\$ 36,720	\$146,880
		GIF-H180 EVIS EXERA II Video Gastroscope	8	\$ 31,383	\$251,064
		OEV-191H Olympus LCD Monitor	4	\$ 4,905	\$19,620
		OL-0013-02 Stand w/display	4	\$ 8,850	\$35,400
		OEP-4 Olympus HD color printer	4	\$ 8,350	\$33,400
		WM-Dpi procedure cart	4	\$ 5,396	\$21,582
		MAJ-179 Sliding Keyboard and MAJ183 Scope Pole	4	\$ 1,160	\$4,640
		ESG AFU 100 Electrosurgical generator	4	\$ 14,400	\$57,600
		Instrumentation	1	\$ 50,000	\$50,000
		Footstools	4	\$ 49	\$195
		Vital Signs Monitors -Welch Allyn 622NP-E1 w/6200	4	\$ 6,155	\$24,620
		Stretchers-Gendron 890 Hydraulic Ht. Adj., Tendelev	16	\$ 3,600	\$57,600
		Stretchers-Gendron 990 Hydraulic Ht. Adj., Tendelev	4	\$ 3,750	\$15,000
		Blanket Warming Cabinet Jewett 1541000	1	\$ 6,645	\$6,645
		Suction Units Schucco S130 Aspirator	4	\$ 350	\$1,400
		Cautery/Bovie Units Con Med 2450 System	4	\$ 15,685	\$62,740
		Narcotics Lock Box	4	\$ 275	\$1,100
		Procedure Carts	4	\$ 1,240	\$4,960
		Medivator Reprocessors	2	\$ 46,221	\$92,441
		Suregon's Chairs	4	\$ 1,000	\$4,000
	Recovery Area	Defibratory Burdick Power Heart AED 9300-501ppc	1	\$ 1,930	\$1,930
		Over the bed tables -Joems OBT500	8	\$ 300	\$2,400
		VS Monitors Welch Allyn 622NP-E1 w/6200-mobile s	8	\$ 6,155	\$49,240

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 Schedule 11 - Moveable Equipment**

For Article 28, 36, and 40 Construction Projects Requiring Full or Administrative Review *

	Stethoscopes	3	\$ 5	\$15
	BP Portable	2	\$ 25	\$50
	Visit Chair	8	\$ 95	\$760
	Wheelchairs	2	\$ 185	\$370
	Curtain System	1	\$ 10,000	\$10,000
	Crash Cart	1	\$ 1,522	\$1,522
	Tracheostomy Tray -Busse 800	1	\$ 85	\$85
General	Desk chairs	9	\$ 195	\$1,755
	Locker banks, double 3, wide 5 per bank	1	\$ 2,787	\$2,787
	Large Narcotics Box for Med Room	1	\$ 375	\$375
	Ronco Communications Telephone System-MICS 7	1	\$ 19,915	\$19,915
	Secure Network Solutions Computer System	1	\$ 21,161	\$21,161
	Appliances for staff lounge (refrigerator, coffee system)	1	\$ 5,500	\$5,500
	Staff lounge furniture	1	\$ 5,000	\$5,000
Total Project Equipment Costs:				\$ 1,589,992

NOTE: All equipment will be purchased.

Schedule 13 A. Assurances From Article 28 Applicants

Article 28 applicants seeking combined establishment and construction or construction approval only must complete this schedule.

The undersigned, as a duly authorized representative of the applicant, hereby gives the following assurances:

- a) The applicant has or will have a fee simple or such other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure use and possession for the purpose of the construction and operation of the facility.
- b) The applicant will obtain the approval of the Commissioner of Health of all required submissions, which shall conform to the standards of construction and equipment in Subchapter C of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (Title 10).
- c) The applicant will submit to the Commissioner of Health final working drawings and specifications, which shall conform to the standards of construction and equipment of Subchapter C of Title 10, prior to contracting for construction, unless otherwise provided for in Title 10.
- d) The applicant will cause the project to be completed in accordance with the application and approved plans and specifications.
- e) The applicant will provide and maintain competent and adequate architectural and/or engineering inspection at the construction site to insure that the completed work conforms to the approved plans and specifications.
- f) If the project is an addition to a facility already in existence, upon completion of construction all patients shall be removed from areas of the facility that are not in compliance with pertinent provisions of Title 10, unless a waiver is granted by the Commissioner of Health, under Title 10.
- g) The facility will be operated and maintained in accordance with the standards prescribed by law.
- h) The applicant will comply with the provisions of the Public Health Law and the applicable provisions of Title 10 with respect to the operation of all established, existing medical facilities in which the applicant has a controlling interest.
- i) The applicant understands and recognizes that any approval of this application is not to be construed as an approval of, nor does it provide assurance of, reimbursement for any costs identified in the application. Reimbursement for all cost shall be in accordance with and subject to the provisions of Part 86 of Title 10.

Date

11/10/09

Signature

Garth Garramone, D.O.

Name (Please Type)

LLC Member

Title (Please type)

Schedule 13 B. Staffing

Table 13B - 1: See "Schedules Required for Each Type of CON" to determine when this form is required. Use the "Other" categories for providers, such as dentists, that are not mentioned in the staff categories. If a project involves multiple sites please create a staffing table for each site.

Total Project Subproject number

A Staffing Categories	B C D Number of FTEs to the Nearest Tenth		
	Current Year*	First Year of implementation	Third Year of implementation
1. Management & Supervision		2.2	2.2
2. Technician & Specialist		3.0	3.0
3. Registered Nurses		9.0	11.0
4. Licensed Practical Nurses			
5. Aides, Orderlies & Attendants			
6. Physicians			
7. PGY Physicians			
8. Physicians' Assistants			
9. Nurse Practitioners			
10. Nurse Midwife			
11. Social Workers and Psychologist**			
12. Physical Therapists and PT Assistants			
13. Occupational Therapists and OT Assistants			
14. Speech Therapists and Speech Assistants			
15. Other Therapists and Assistants			
16. Infection Control, Environment and Food Service		1.0	1.0
17. Clerical & Other Administrative		4.5	4.5
18. Other			
19. Other			
20. Other			
21. Total Number of Employees		19.7	21.7

*Last complete year prior to submitting application

**Use only for RHCF and D and T Center proposals

Describe how the number and mix of staff were determined:

Based on regulatory requirements; quality of care standards for ambulatory surgery centers specializing in endoscopy and physician experience in similar settings.

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Schedule 13B

1.) All diagnostic and treatment centers should complete the following section:

Name of medical director:	Garth Garramone, D.O.
License number of the Medical Director	217231-1

	Not Applicable:	Title of Attachment	Filename of attachment
Attach a copy of the medical director's curriculum vitae.	<input type="checkbox"/>	Medical Director C.V.	11

Acute care facility with which an affiliation agreement is being negotiated:	Faxton-St. Luke's Healthcare and St. Elizabeth Medical Center
--	---

In the space below, Indicate the status of those negotiations:
 Following submission of this CON application there will be further meetings with the hospitals to discuss the application and request for transfer agreements. We anticipate that each facility will agree to enter into an affiliation/transfer agreement.

	Not Applicable:	Title of Attachment	Filename of attachment
Attach a copy of a letter of intent or the affiliation agreement, if appropriate.	<input checked="" type="checkbox"/>		

Distance in miles from the proposed facility to the acute care affiliate.	1.5 miles
Distance in minutes of travel time from the proposed facility to the acute care affiliate.	5 minutes
Name of the acute care facility, nearest the proposed facility:	St. Luke's Hospital
Distance in miles from the proposed facility to the nearest acute care facility:	1.5 miles
Distance in minutes of travel time from the proposed facility to the nearest acute care facility.	5 minutes

**New York State Department of Health
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Schedule 13B

Table 13B - 2. Ambulatory surgery centers should complete the following Table:

List all practitioners -- including surgeons, Dentists and Podiatrists, who have expressed an interest in practicing at the Center.
NOTE: Attach copies of letters from each giving the number and type of procedures he or she expects to perform per year.

Practitioner's Name	License No.	Specialty (s)	Board Certified or Eligible	Expected Number of Procedures	List hospitals where Physician has Admitting Privileges:	Title and File Name of attachment
Stanley Weiselberg, M.D.	143482-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	875	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Norman Neslin, M.D.	157789-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	850	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Robert Pavelock, M.D.	174776-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	850	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Bradley Sklar, M.D.	179332-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	850	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Richard Cherkpak, M.D.	185866-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	850	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Brett Gandhi, M. D.	183530-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	850	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations
Garth Garramone, D.O.	217231-1	Gastroenterology	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	875	St. Luke's, Faxton, Oneida, St. Elizabeth's	Attachment 12 Procedure Expectations

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Schedule 13C

Schedule 13 C. Annual Operating Costs

For Establishment and/or Construction Requiring Full/Administrative Review

Use this schedule to summarize the first full year's incremental cost for the categories, which are affected by this project. The first full year is defined as the first 12 months of full operation after project completion. Project the first and third full year's direct incremental costs in current year dollars. (Show only additional operating costs to be incurred during the first full year after project completion). Enter in the column heading the year and month when this period begins and ends."

Total Project

Subproject Number _____

Categories	Current Year	1st Year Annual Incremental Cost Impact	3rd Year Annual Incremental Cost Impact
	1	2	3
1. Salaries & Wages	N o t A p p l i c a b l e	\$ 938,000	\$ 1,129,071
1a. FTEs		19.7	21.7
2. Employee Benefits		\$ 187,600	\$ 225,814
3. Professional Fees		\$ 33,500	\$ 35,540
4. Medical & Surgical Supplies		\$ 327,780	\$ 420,768
5. Non-medical & Non-surgical Supplies		\$ 12,000	\$ 15,404
6. Utilities		\$ 58,000	\$ 61,532
7. Purchased Services		\$ 24,000	\$ 27,467
8. Other Direct Expenses		\$ 290,282	\$ 331,513
9. Subtotal (total 1 thru 8)		\$ 1,871,162	\$ 2,247,109
10. Interest		\$ 112,222	\$ 83,868
11. Depreciation & Rent		\$ 707,454	\$ 707,454
12. Total Incremental Operating Costs		\$ 2,690,838	\$ 3,038,431

	Attachment # and Title
1. In an attachment, provide the basis and supporting calculations for depreciation and rent expense.	#13 Depreciation, Interest and Rent Expense
2. In an attachment, provide the basis for interest cost. Separately identify, with supporting calculations, interest attributed to mortgages and working capital.	#13 Depreciation, Interest and Rent Expense

Any approval of this application is not to be construed as an approval of any of the above indicated current or projected operating costs. Reimbursement of any such costs shall be in accordance with and subject to the provisions of Part 86 of 10 NYCRR. Approval of this application does not assure reimbursement of any of the costs indicated therein by payors under Title XIX of the Federal Social Security Act (Medicaid) or Article 43 of the State Insurance Law or by any other payors.

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Schedule 13D

Table 13D - 1

	a	b	c
Categories	Current Year	Year 1 Incremental Revenue Impact	Year 3 Incremental Revenue Impact
Start date of year in question:(m/d/yyyy)			
1. Daily Hospital Services	N o t A p p l i c a b l e	N/A	N/A
2. Ambulatory Services		\$ 3,453,690	\$ 4,178,716
3. Ancillary Services		N/A	N/A
4. Total Gross Patient Care Services Rendered		\$ 3,453,690	\$ 4,178,716
5. Deductions from Revenue			
6. Net Patient Care Services Revenue		\$ 3,453,690	\$ 4,178,716
7. Other Operating Revenue (Identify sources)			
8. Total Operating Revenue (Total 1-7)		\$ 3,453,690	\$ 4,178,716
9. Non-Operating Revenue		\$ -	\$ -
10. Total Project Revenue		\$ 3,453,690	\$ 4,178,716

Table 13D - 4

Outpatient Services** Source of Revenue	Total Current Year			First Year Incremental			Third Year Incremental			
	Visits	Net Revenue*		Visits	Net Revenue*		Visits	Net Revenue*		
		%	Dollars (\$)		%	Dollars (\$)		%	Dollars (\$)	
Commercial Fee for				121	2.4%	\$ 84,700	146	2.4%	\$ 102,200	
Managed Care				4,149	77.9%	\$ 2,696,850	5,020	78.1%	\$ 3,263,000	
Medicare Fee for	N o t A p p l i c a b l e			1,503	16.4%	\$ 569,637	1,819	16.5%	\$ 689,401	
Managed Care										
Medicaid Fee for					46	0.8%	\$ 27,438	56	0.7%	\$ 30,128
Managed Care					97	1.7%	\$ 57,982	117	1.5%	\$ 63,999
Private Pay					84	0.8%	\$ 27,342	102	0.7%	\$ 29,988
OASAS										
OMH										
Charity Care										
Bad Debt										
All Other										
Total				6,000	100%	\$ 3,463,949	7,260	100%	\$ 4,178,716	
Total of Inpatient and Outpatient			\$ -			\$ 3,463,949			\$ 4,178,716	

Schedule 14A - Additional Legal Information - Article 28 Business Corporations

Instructions:

Article 28 applicants seeking establishment or combined establishment and construction approval that are business corporations must complete this schedule.

N.B.: Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.

Business Corporations:

A. Affidavits: Attach the originals of stockholder affidavits from each stockholder including the specific information set forth in 10 NYCRR 620.1(b).

B. Stock Certificate: Attach a sample stock certificate including the specific language set forth in 10 NYCRR 620.1(a)(4).

N.B.: The Certificate of Incorporation must comply with the language requirements set forth in 10 NYCRR 620.1(a).

C. Limited Liability Corporation Stockholders: Does the applicant have any stockholders that are limited liability companies (LLCs)?

Yes No

If yes, identify each LLC-stockholder in the following table:

Name of LLC Shareholder:	Address

D. Documentation for LLC Stockholders: For each LLC-stockholder (2nd Level Stockholder), attach the following documentation:

1. A list providing the name, membership interest and percentage ownership interest in the 2nd Level Stockholder and indirect ownership percentage in the Article 28 business corporation. (Indirect ownership is determined by multiplying the percentage of ownership in each entity. For example, if A owns 10 percent of a 2nd Level Stockholder which itself owns 80 percent of an Article 28 business corporation, A owns an indirect ownership interest of eight percent in the Article 28 business corporation.) for each member;

N.B.: All members of the 2nd Level Stockholder must be natural persons.

2. A list of all managers;
3. Articles of Organization; and
4. Operating Agreement.

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E. Articles of Organization: In addition to any other provisions required by the Limited Liability Company Law, the Articles of Organization of the 2nd Level Stockholder must include provisions to the following effect:

1. That all members of must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health; and
2. That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(c) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

F. Operating Agreement: The Operating Agreement of the 2nd Level Stockholder must include provisions to the following effect:

- a. That all members must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health;
- b. That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(c) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health; and
- c. That, if the 2nd Level Stockholder will be managed by managers who are not members, the following powers with respect to the ownership and operation of the Article 28 business corporation are reserved to the members of the 2nd Level Stockholder:
 - i. direct independent authority over the appointment or dismissal of hospital management-level employees and medical staff,
 - ii. approval of hospital operating and capital budgets and independent control of the books and records,
 - iii. adoption or approval of hospital operating policies and procedures and independent adoption of policies affecting the delivery of health care services,
 - iv. authority over the disposition of assets and authority to incur liabilities not normally associated with day-today operations,
 - v. approval of certificate of need applications filed by or on behalf of the hospital,
 - vi. approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law,
 - vii. approval of hospital contracts for management or for clinical services, and
 - viii. approval of settlements of administrative proceedings or litigation to which the hospital is a party, and that this provision may not be deleted, modified or amended without the prior approval of the Department of Health.

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Schedule 14A

SCHEDULE 14A CHECKLIST OF ATTACHMENTS

DOCUMENT	NA	Attached	Attachment number	Electronic Document file name
Business Corporations:				
Stockholder affidavits	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Sample stock certificate	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Stockholder-LLCs	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of members	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of managers	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Articles of Organization	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Operating Agreement	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

Schedule 14B Additional Legal Information Article 28 Limited Liability Companies

Instructions:

Article 28 applicants seeking establishment or combined establishment and construction approval that are *limited liability companies* must complete this Schedule in its entirety.

N.B.: Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.

I. Articles of Organization

Provisions to the following effect must be included:

- A. The name of the LLC which must contain either the words "Limited Liability Company" or the abbreviations "LLC" or "L.L.C.";
- B. Designation of the Secretary of State as agent of the LLC for service of process and an address to which the Secretary of State may mail a copy of any such process;
- C. How the LLC will be managed and that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the New York State Department of Health;
- D. If the LLC will be managed by managers who are not members, that the manager may not be changed without the prior approval of the New York State Department of Health;
- E. That the powers and purposes of the LLC are limited to the ownership and operation of the Article 28 facility specifically named and the location of the facility by street address, city, town, village or locality and county;

N.B.: The powers and purposes may also include the operation of an Article 36 facility, an Article 40 facility and/or an Article 44 entity if the applicant has received all appropriate approvals and certifications.

- F. The location of the principal office of the LLC, which must be the same address as the facility; and
- G. That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of New York State Department of Health membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law.

II. Operating Agreement

Provisions to the following effect must be included:

- A. That the powers and purposes of the LLC are limited to the ownership and operation of the Article 28 facility specifically named and the location of the facility by street address, city, town, village or locality and county;
- B. That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law;
- C. How the LLC will be managed and that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the Department of Health;
- D. If the LLC will be managed by managers who are not members, that the manager may not be changed without the prior approval of the Department of Health; and

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E. If the LLC will be managed by managers who are not members, that the following powers are reserved to the members:

- (i) direct independent authority over the appointment or dismissal of hospital management-level employees and medical staff;
- (ii) approval of hospital operating and capital budgets and independent control of the books and records;
- (iii) adoption or approval of hospital operating policies and procedures and independent adoption of policies affecting the delivery of health care services;
- (iv) authority over the disposition of assets and authority to incur liabilities not normally associated with day-to-day operations;
- (v) approval of certificate of need applications filed by or on behalf of the hospital;
- (vi) approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- (vii) approval of hospital contracts for management or for clinical services; and
- (viii) approval of settlements of administrative proceedings or litigation to which the hospital is a party.

III. Management

Will the applicant be managed by managers who are not members?

Yes No

If yes, attach the proposed Management Agreement between the applicant and the manager, which must meet the following requirements and be approved by the Commissioner.

A. The management agreement must include provisions to the following effect:

- 1. A description of the proposed roles of the members of the Article 28 LLC during the period of the proposed management contract, which must clearly reflect retention by the members of ongoing responsibility for statutory and regulatory compliance,
- 2. A provision that clearly recognizes that the responsibilities of the members of the Article 28 LLC are in no way obviated by entering into a management agreement and that any powers not specifically delegated to the manager through the provisions of the management agreement remain with the members,
- 3. The following powers are reserved to the members of the Article 28 LLC:
 - i. direct independent authority over the appointment or dismissal of hospital management-level employees and medical staff;
 - ii. approval of hospital operating and capital budgets and independent control of the books and records;
 - iii. adoption or approval of hospital operating policies and procedures and independent adoption of policies affecting the delivery of health care services;
 - iv. authority over the disposition of assets and authority to incur liabilities not normally associated with day-to-day operations;
 - v. approval of certificate of need applications filed by or on behalf of the hospital;
 - vi. approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;

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- vii. approval of hospital contracts for management or for clinical services; and
- viii. approval of settlements of administrative proceedings or litigation to which the hospital is a party; and that this provision may not be deleted; modified or amended without the prior approval of the Department of Health.

4. The following language:

"Notwithstanding any other provision in this contract, the facility remains responsible for ensuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, State and local statutes, rules and regulations."

- 5. A plan for assuring maintenance of the fiscal stability, the level of services provided and the quality of care rendered by the facility during the term of the management agreement, and
- 6. Retention of authority by the members of the Article 28 LLC to discharge the manager and its employees from their positions at the facility with or without cause on not more than 90 days' notice. In such event, the facility shall notify the Department in writing at the time the manager is notified. The members of the Article 28 LLC must provide a plan for the operation of the facility subsequent to the discharge of the manager and such plan must be submitted with the notification to the Department.
- 7. That the manager may not be changed and its responsibilities and obligations under the management agreement may not be subcontracted, assigned or otherwise assumed without the prior approval of the Department of Health;

B. The members of the Article 28 LLC must retain sufficient authority and control to discharge its statutory and regulatory responsibility. The following powers must be specifically reserved to the Article 28 LLC members:

- i. Direct independent authority over the appointment or dismissal of the facility's management-level employees and medical staff,
- ii. Approval of the facility's operating and capital budgets and independent control of the books and records,
- iii. Adoption or approval of the facility's operating policies and procedures and independent adoption of policies affecting the delivery of health care services,
- iv. Authority over the disposition of assets and authority to incur liabilities not normally associated with day-to-day operations,
- v. Approval of certificate of need applications filed by or on behalf of the facility,
- vi. Approval of debt necessary to finance the cost of compliance with operational or physical plant standards required by law,
- vii. Approval of the facility's contracts for management or for clinical services, and
- viii. Approval of settlements of administrative proceedings or litigation to which the facility is a party;

C. An Article 28 LLC desiring to be managed by managers who are not members must submit a proposed written management agreement to the Department at least 60 days before the intended effective date, unless a shorter period is approved in writing by the Commissioner, due to extraordinary circumstances. In addition, the Article 28 LLC shall also submit, within the same time frame, the following:

- 1. Documentation demonstrating that the proposed manager holds all necessary approvals to do business within New York,

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2. Documentation of the goals and objectives of the management arrangement, including a mechanism for periodic evaluation by the members of the Article 28 LLC of the effectiveness of the arrangement in meeting those goals and objectives,
3. Evidence of the manager's financial stability,
4. Information necessary to determine that the character and competence of the proposed manager, and its principals, officers and directors, are satisfactory, including evidence that all facilities it has managed within New York have provided a substantially consistent high level of care in accordance with applicable statutes and regulations, during the term of any management agreement contract or the period they held an operating certificate, and
5. Evidence that it is financially feasible for the facility to enter into the proposed management agreement for the term of the agreement and for a period of one year following expiration, recognizing that the costs of the agreement are subject to all applicable provisions of Part 86 of 10 NYCRR. To demonstrate evidence of financial feasibility, the facility shall submit projected operating and capital budgets for the required periods. Such budgets shall be consistent with previous certified financial statements and be subject to future audits;

D. During the period between a facility's submission of a request for initial approval of a management contract and disposition of that request, a facility may not enter into any arrangement for management contract services other than a written interim consultative agreement with the proposed manager. Any interim agreement must be consistent with these provisions and submitted to the Department no later than five days after its effective date.

E. The term of a management contract shall be limited to three years and may be renewed for additional periods not to exceed three years only when authorized by the Commissioner. The Commissioner shall approve an application for renewal provided that compliance with this section and the following provisions can be demonstrated:

1. That the goals and objectives of the arrangement have been met within specified time frames,
2. That the quality of care provided by the facility during the term of the arrangement has been maintained or has improved, and
3. That the level of service to meet community needs and patient access to care and services has been maintained or improved.

IV. Membership Certificates

Does the applicant intend to issue membership certificates?

Yes No

If yes, attach a sample membership certificate including the following legend:

"That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law."

V. Business Corporation Members

Does the applicant have any members which are business corporations?

Yes No

If yes:

A. Identify each business corporation-member (2nd level member) in the following table:

—

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2 nd Level Member:	Address

B. For each business corporation-member, attach the following documentation:

1. A list providing the name, stock interest and percentage ownership interest in the 2nd Level Member and indirect ownership percentage in the Article 28 LLC for each stockholder. (Indirect ownership is determined by multiplying the percentage of ownership in each entity. For example, if A owns 10 percent of a 2nd Level Member which itself owns 80 percent of an Article 28 LLC, A owns an indirect ownership interest of eight percent in the Article 28 LLC.);

N.B.: All stockholders of the 2nd Level Member must be natural persons.

2. A list providing the name and position held for each officer and director; and
3. Certificate of Incorporation. In addition to any other provisions required by the Business Corporation Law, the Certificate of Incorporation of the 2nd Level Member must include provisions to the following effect:
 - a. That all stockholders must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health; and
 - b. That notwithstanding anything to the contrary in the Certificate of Incorporation or the Bylaws, transfers, assignments or other dispositions of ownership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

VI. General or Registered Limited Liability Partnership Members

Does the applicant have any members which are general or registered limited liability partnerships?

Yes No

If yes:

A. Identify each partnership-member (2nd level member) in the following table:

2 nd Level Member:	Address
-------------------------------	---------

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2 nd Level Member:	Address

B. For each partnership-member, attach the following documentation:

- 1 A list providing the name, partnership interest and percentage ownership interest in the 2nd Level Member and indirect ownership percentage in the Article 28 LLC for each partner. (Indirect ownership is determined by multiplying the percentage of ownership in each entity. For example, if A owns 10 percent of a 2nd Level Member which itself owns 80 percent of an Article 28 LLC, A owns an indirect ownership interest of eight percent in the Article 28 LLC.); and

N.B.: All partners of the 2nd Level Member must be natural persons.

- 2 The Partnership Agreement of the 2nd Level Member must include provisions to the following effect:
 - a. That all partners must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health;
 - b. That transfers, assignments or other dispositions of partnership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

VII. Not-for-Profit Corporation Members

Does the applicant have any members which are not-for-profit corporations?

Yes No

If yes:

A. Identify each not-for-profit corporation-member (2nd Level Member):

2 nd Level Member:	Address
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2nd Level Member:	Address

B. For each not-for-profit corporation-member, attach the following documentation:

- 1 A list providing the name and interest or position held for each member, director, and officer;
- 2 Certificate of Incorporation; and
- 3 Bylaws.

C. Are any of the following powers reserved to any of the corporation's member(s):

Appointment or dismissal of hospital management-level employees and medical staff, except the election or removal of corporate officers.

Yes No

Member:

Approval of hospital operating and capital budgets.

Yes No

Member:

Adoption or approval of hospital operating policies and procedures.

Yes No

Member:

Approval of certificate of need applications filed by or on behalf of the hospital

Yes No

Member:

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If yes, attach documentation of approval for this application.

Approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law.

Yes No

Member:

Approval of hospital contracts for management or for clinical services.

Yes No

Member:

Approval of settlements of administrative proceedings or litigation to which the hospital is a party, except approval of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

Yes No

Member:

N.B.: If any of the corporation's members have been or will be delegated any of these powers, the member itself must have or obtain establishment approval as an active 2nd level member. If so, submit Schedule 2A for each individual listed in item B(1) above. Directors who contribute capital in support of the project must also submit Schedule 2B. Directors who do not contribute capital in support of the project must also submit Schedule 2C.

VIII. Limited Liability Company Members

Does the applicant have any members which are also LLCs?

Yes No

If yes:

A. In the following table, identify each LLC 2nd level member :

2 nd Level Member	Address

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2 nd Level Member	Address

B. For each LLC-member, attach the following documentation:

- 1 A list providing the name, membership interest and percentage ownership interest in the 2nd Level Member and indirect ownership percentage in the Article 28 LLC. (Indirect ownership is determined by multiplying the percentage of ownership in each entity. For example, if A owns 10 percent of a 2nd Level Member which itself owns 80 percent of an Article 28 LLC, A owns an indirect ownership interest of eight percent in the Article 28 LLC.)

N.B.: All members of the 2nd Level Member must be natural persons.

- 2 A list of all managers;
- 3 Articles of Organization; and
- 4 Operating Agreement.

C. In addition to any other provisions required by the Limited Liability Company Law, the Articles of Organization of the 2nd Level Member must include provisions to the following effect:

- 1 That all members must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health;
- 2 That transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

D. The Operating Agreement of the 2nd Level Member must include provisions to the following effect:

- 1 That all members must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health,
- 2 That notwithstanding anything to the contrary in the Articles of Organization or the Operating Agreement, transfers, assignments or other dispositions of membership interests or voting rights

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must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health; and

- 3 That, if the 2nd Level Member will be managed by managers who are not members, that the following powers with respect to the ownership and operation of the Article 28 LLC are reserved to the members of the 2nd Level Member:
- (i) direct independent authority over the appointment or dismissal of hospital management-level employees and medical staff;
 - (ii) approval of hospital operating and capital budgets and independent control of the books and records;
 - (iii) adoption or approval of hospital operating policies and procedures and independent adoption of policies affecting the delivery of health care services;
 - (iv) authority over the disposition of assets and authority to incur liabilities not normally associated with day-today operations;
 - (v) approval of certificate of need applications filed by or on behalf of the hospital;
 - (vi) (approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
 - (vii) approval of hospital contracts for management or for clinical services; and
 - (viii) approval of settlements of administrative proceedings or litigation to which the hospital is a party; and that this provision may not be deleted; modified or amended without the prior approval of the Department of Health.

SCHEDULE 14B CHECKLIST OF ATTACHMENTS

DOCUMENT	NA	Atta- ched	Attach- ment number	Electronic Document file name
Management Agreement	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Sample membership certificate	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Business Corporation- Members				
Members	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of stockholders	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of officers and directors	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Certificate of Incorporation	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Not-for-Profit Corporation- Members				
Members	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of members	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of officers and directors	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Certificate of Incorporation	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Bylaws	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Documentation of approval for the application	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Limited Liability Company - Members				
Members	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of members	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of managers	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Articles of Organization	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Operating Agreement	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
General or Registered Limited Liability Company - Members				
List of Partners	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Partnership Agreement	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

Schedule 14c Additional Legal Information Article 28 Not-For-Profit Corporations

Instructions:

Article 28 applicants seeking establishment or combined establishment and construction approval that are *not-for-profit corporations* must complete this Schedule in its entirety.

N.B.: Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.

I. Directors

A. Number of director positions set by bylaws or otherwise fixed:

(See Not-for-Profit Corporation Law 702.)

B. Number of director positions currently filled:

C. Explain how and by whom the directors will be appointed or elected:

II. Members

A. In the following table, identify each member of the applicant:

Member:	Address

B. For each member, attach the following documentation:

1. A list of the name and position held for each officer and director;
2. Certificate of Incorporation; and

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3. Bylaws.

III. Reserved Powers

A. Are or will any of the following powers be reserved to any of the applicant's member(s):

Appointment or dismissal of hospital management-level employees and medical staff, except the election or removal of corporate officers.

Yes No

Member:

Approval of hospital operating and capital budgets.

Yes No

Member:

Adoption or approval of hospital operating policies and procedures.

Yes No

Member:

Approval of certificate of need applications filed by or on behalf of the hospital.

Yes No

Member:

If yes, attach documentation of approval for this application.

Approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law.

Yes No

Member:

Approval of hospital contracts for management or for clinical services.

Yes No

Member:

Approval of settlements of administrative proceedings or litigation to which the hospital is a party, except approval of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

Yes No

Member:

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N.B.: If any of the applicant's members have been or will be delegated any of these powers, the member itself must have or obtain establishment approval. If so, submit Schedule 2a for each individual listed in item B(1) above. Directors who contribute capital to the project must also submit Schedule 2b. Directors who do not contribute capital to the project must also submit Schedule 2c.

B. Do any of the applicant's members reserve the power to approve certificate of need applications to ensure that they conform to the facility's stated mission and philosophy?

Yes No

Member:

If yes, attach documentation of approval for this application.

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SCHEDULE 14C CHECKLIST OF ATTACHMENTS

DOCUMENT	NA	Atta- ched	Attach- ment number	Electronic Document file name
Members	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
List of officers and directors	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Certificate of Incorporation	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Bylaws	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

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Schedule 14D

Schedule 14D Additional Legal Information - Article 28 General or Registered Limited Liability Partnerships

Instructions:

1. The language in Section A of this schedule must be included in the Partnership Agreements for Article 28 applicants seeking establishment or combined establishment and approval that are partnerships.
2. The language in section B of this schedule must be included in the Certificate of Registration for Article 28 applicants seeking establishment or combined establishment and construction approval that are registered limited liability partnerships.

N.B.: Whenever a requested legal document has been amended, modified, or restated, all amendment(s), modification(s) and/or restatement(s) should also be submitted.

- A. Partnership Agreement – The language in section 600.1(5)(ii) of 10NYCRR must be included in its entirety for general or registered limited liability partnerships.
- B. Certificate of Registration – must include provisions to the following effect::
 1. That the powers and purposes specifically include the ownership and operation of the facility and the name of the facility; and
 2. That, notwithstanding anything to the contrary in the Certificate of Partnership agreement, transfers, assignments or other dispositions of partnership interests or voting rights must be effectuated in accordance with section 2801-4(b) of the PHL.

SCHEDULE 14D CHECKLIST OF ATTACHMENTS

DOCUMENT	NA	Attached	Attach- ment number	Electronic Document file name
Certificate of Registration	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

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Schedule 17A

Schedule 17 A - Diagnostic and Treatment Center Program Information.

See "Schedules Required for Each Type of CON" to determine when this form is required.

Instructions: In the space below, briefly indicate how the facility intends to comply with state and federal regulations. If the application involves conversion of an existing practice, state who owns the practice and how the conversion will be done. If there are other entities utilizing the same space or resources, please state exactly how the space and resources will be allocated. Also, provide a description of the other entities.

The proposed Mohawk Valley EC, LLC intends to comply with State and federal regulations. It will seek to become an approved Medicare provider as soon as possible following approval and will thus be familiar with federal regulations. Its policies and procedures will be consistent with all New York State requirements for operations of an ambulatory surgery center licensed under Article 28 of the Public Health Law. The administrator and Medical Director will be responsible for assuring that the facility is in compliance with State and federal regulations.

DDM CON Schedule 17B
 SCHEDULE 17 B - COMMUNITY NEED

Public Need Summary

Briefly summarize on this schedule, why the project is needed. Use additional paper, as necessary. If the following items have been addressed in the project narrative, please cite the relevant section and pages.

1. Identify the relevant service are (e.g., Minor Civil Division(s), Cenus Tract(s), street boundaries, Zip Code(s), Health Professional Shortage Are (HPSA) etc.)

The proposed Mohawk Valley Endoscopy Center's service area will consist primarily of the three counties where current patients of the gastroenterology practice of the sponsoring physicians currently reside. The majority of patients (70-75 percent) are likely to reside in Oneida County; 10-15 percent in Herkimer County; 5 percent in Madison County; and 5-10 percent from nearby counties including Lewis and Chenango.

2. Provide a quantitative and qualitative description of the population to be served. (Qualitative data may include median income, ethnicity, payor mix, etc.)

The population for the three counties which will comprise the majority of the patients to be served by the proposed Mohawk Valley Endoscopy Center totaled 369,937 according to the 2000 Census. Oneida County accounted for the majority of these residents (235,469) followed by Madison (69,441) and Herkimer (64,427). The White population comprised 92.6 percent of the population of the three counties with 4 percent Black/African American and 3.4 percent Other. The population is 50.4 percent female and 49.6 percent male. The population age is 65+ in 2010 is projected to total 55,765 (15.3 percent of the three county population) and is projected to be 60,457 in 2020, an increase of 8.4 percent.¹ It is anticipated that the payor mix for the proposed ambulatory surgery center will be similar to that of the current gastroenterology medical practice of the sponsoring physicians which is presented below:

Projected Payor Mix Mohawk Valley Endoscopy Center (Percent)	
Commercial/Managed Care	69
Medicare	25
Commercial/Fee-for-Service	2
Medicaid Managed Care	2
Medicaid/Fee-for-Service	1
Self-Pay	1
Total	100

¹ Cornell University Program on Applied Demographics New York State and County Population Projections by Age and Sex – Preliminary Population Projections by Age and Sex, New York State and 62 Counties, 2005-2035.

3. Document the current and projected demand for the proposed services. If the proposed services are covered by a DOH need methodology, demonstrate how the proposed service is consistent with it.

The seven gastroenterologists at Digestive Disease Medicine ("DDM") performed 19,173 outpatient endoscopy procedures in 2008 at St. Elizabeth Medical Center, Faxton-St. Luke's Healthcare –Faxton Division, Faxton-St. Lukes Healthcare-St. Lukes Division and Oneida Healthcare Center. The practice has been unable to fully meet the demand for endoscopy procedures by its current patient base. At the current time, there is a 10-14 week wait for an endoscopy procedure with approximately 500 patients waiting each week. This results in a pent-up demand for procedures totaling 5,000-7,000 procedures. The backlog is likely to continue to increase as the population of the three county area continues to age and more people practice preventative medicine. In order to meet the current and future demand for endoscopy services, the physician practice must increase the number of gastroenterologists in the practice. Although the practice has been actively recruiting additional gastroenterologists in recent years, it has been unsuccessful due to the shortage of the specialists along with the limited desirability of residing in Central New York. At least two new physicians will be needed to meet the additional demand when the proposed endoscopy center begins operation and at least one additional physician will be required by its third year of operation. It is anticipated that 6,000 additional endoscopy procedures would be performed during the initial year of the proposed Center's operation. The increase in procedures is attributable to a number of factors including an aging population, the availability of payment for these procedures by Medicare and many other insurers, and the increased emphasis on measures designed to indentify and treat health care conditions at the earliest possible stage. The DDM physicians will continue to practice at the four hospitals where they currently perform procedures and the complementary capacity of the proposed Center will not adversely impact the number of procedures currently performed in the hospitals.

4. (a) Describe how this project responds to and reflects the needs of the residents in the community you propose to serve.

The population currently receives endoscopy services at St. Elizabeth Medical Center, Faxton-St. Luke's Healthcare –Faxton Division, Faxton-St. Lukes Healthcare-St. Lukes Division and Oneida Healthcare Center. As indicated previously in #3, there is a 10-14 week wait for endoscopy procedures by patients at Digestive Disease Medicine.

The expanded capacity to perform endoscopy procedures will benefit community residents by reducing waiting times for procedures. In addition, freestanding endoscopy centers have proven to provide quality, cost-effective services in a facility which is patient-friendly and less intimidating than hospitals. Managed care plans have expressed interest in the cost-effective provision of endoscopy services in a freestanding facility. The creation of facilities which can meet market demands for cost-effective health care services is imperative to the long-term viability of the health care system.

Through expansion of capacity by both establishment of the proposed Endoscopy Center and recruitment of additional gastroenterologists, outreach activities can be initiated in both

the three county primary service area as well as in surrounding underserved counties in an effort to serve additional patients who would benefit from endoscopy procedures.

The proposed Center will serve all patients in need of its services regardless of income, race, sex, age or ability to pay. It is committed to creating a program that facilitates access to all populations and will establish a sliding fee scale for patients in need of services who are uninsured and lack the ability to pay full fees. ✓

4. (b) Describe how this project is consistent with your facility's Community Service Implementation Plan (voluntary not-for-profit hospitals) or strategic plan (other providers)

Freestanding ambulatory surgery provides cost-effective, high quality health care with a high level of personal attention to better serve community needs. Independent facilities have been shown to be significantly different from hospital-based centers. Because of their smaller size and limited function, freestanding units enable the delivery of better service at lower cost, return control of the patient to the physician and effectively bridge the gap between the capabilities of the physician's office and those of the hospital. Freestanding centers have been shown to be less costly than hospital-based centers while providing greater levels of physician and patient satisfaction. As managed care plans seek to decrease health care expenditures, low-cost alternatives are required. Establishment of the proposed Endoscopy Center will ensure that a cost-effective site for endoscopy services is readily accessible to the service area's population.

5. Describe where and how the population to be served currently receives the proposed services.

As indicated in #3 previously, in 2008 the seven physicians at Digestive Disease Medicine performed 19,173 outpatient endoscopy procedures at four hospital facilities. However, as described in that same section, there was a pent-up demand for an additional 5,000-7,000 procedures.

In order to meet that demand and to meet additional needs in the three county primary service area as well as contiguous counties, two events must occur. First, capacity must be expanded to perform endoscopy services through establishment of the proposed Endoscopy Center. This in turn, will allow Digestive Disease Medicine to recruit additional gastroenterologists who can assist in meeting the demand for endoscopy procedures.

QUALITY AND ACCREDITATION

1. Please cite relevant accreditations, certifications or awards attained by the applicant which build confidence in services of high quality.

NA

2. Describe relevant programs or resources the applicant will bring to the new facility. Include existing programs that have proven track records at the applicant's other sites, if applicable, as well as programs the applicant plans for the future. Such programs include:

- a. Programs specially tailored to the health needs of the population of the service**
- b. Grant funded programs.**
- c. Scholarships or fellowships.**

NA

3. Describe the applicant's experience or track record serving similar populations:

As described previously, the seven physician owners of the proposed Endoscopy Center have been providing gastroenterology services to residents of Oneida, Herkimer and Madison and surrounding counties for 20 years. In 2008, they performed 19,173 outpatient endoscopy procedures at four hospital facilities.

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Schedule 17C

Impact of Proposed CON on Diagnostic & Treatment Center Operating Certificate

TABLE 17C-1 AUTHORIZED SERVICES

Instructions:

For applications requesting changes to more than one location, complete a separate Table 17-C-1 for each location
 For Chronic Dialysis Services only, enter only location below and proceed to page 2
Column c: Mark "x" in the box only if the service currently appears on the operating certificate (OpCert) not including requested changes
Column d: Mark "x" in the box this CON application seeks to add. **Column e:** Mark "x" in the box this CON application seeks to decertify.
Column f: Mark "x" in the box corresponding to all the services that will ultimately appear on the OpCert.

LOCATION: <i>(Enter street address of facility)</i>	<input type="checkbox"/> MOBILE CLINIC DESIGNATION (217) * Check box only if extension clinic is mobile <i>(A mobile clinic must be an extension clinic with a fixed main site)</i>
---	--

a	b	c	d	e	f
		Existing	Add	Remove	Proposed
ABORTION	201	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ADULT DAY HEALTH	58	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ADULT DAY HEALTH - AIDS	172	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AMBULATORY SURGERY**					
MULTI-SPECIALTY**	204	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SINGLE-SPECIALTY** (UNDESIGNATED SPECIALTY)	205	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GASTROENTEROLOGY**	202	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OPHTHALMOLOGY**	195	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ORTHOPEDICS**	203	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AUDIOLOGY O/P(See Section 700.2)	159	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BIRTHING SERVICE O/P	180	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CERTIFIED MENTAL HEALTH SERVICES O/P***	53	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHEMICAL DEPENDENCE-REHABILITATION O/P	150	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLINIC OMRDD ARTICLE 16 SERVICES	218	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLINIC PART TIME SERVICES****	18	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLINICAL LABORATORY SERVICES O/P	018	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CT SCANNER	400	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DENTAL O/P	145	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FAMILY PLANNING O/P	148	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HEALTH FAIRS O/P	197	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HYPERBARIC CHAMBER	401	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LINEAR ACCELERATOR	402	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LITHOTRIPSY O/P	223	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MAGNETIC RESONANCE IMAGING (MRI)	403	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MEDICAL SOCIAL SERVICES O/P	50	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
METHADONE MAINTENANCE O/P	149	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MULTIPHASIC SCREENING FACILITY	305	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MULTIPHASIC SCREENING O/P	188	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NUCLEAR MEDICINE – DIAGNOSTIC O/P	224	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NUCLEAR MEDICINE – THERAPEUTIC O/P	225	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- * MOBILE CLINIC: For each location a clinic vehicle will parks to provide services, a separate "Mobil Clinic Site Approval Request" must be attached. A blank form is included below.
- ** AMBULATORY SURGERY requires additional approval by Medicare
- *** MENTAL HEALTH requires additional approval by Office of Mental Health
- **** PART-TIME CLINICS: For each site, enclose a completed copy of form DOH-4-197 (9/00), which is available from:
Project Management Group, Division of Health Facility Planning, Office of Health Systems Management,
New York State Department of Health, 433 River Street, 6th floor, Troy, NY 12180

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Schedule 17C

TABLE 17C-1 AUTHORIZED SERVICES (cont.)

a	b	c	d	e	f
		Existing	Add	Remove	Proposed
NUTRITIONAL O/P	185	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OPHTHAMOLOGY O/P	227	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OPTOMETRY O/P	228	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OUTPATIENT SURGERY	68	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PEDIATRICS O/P	152	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PET SCANNER	404	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PHARMACEUTICAL SERVICES	073	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PHYSICAL MEDICINE AND REHABILITATION O/P	160	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PODIATRY O/P	177	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PRENATAL O/P	081	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PRIMARY MEDICAL CARE O/P	071	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PSYCHOLOGY O/P	085	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RADIOLOGY - DIAGNOSTIC	184	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RADIOLOGY - THERAPEUTIC	230	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RENAL DIALYSIS - HOME TRAINING O/P	37	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
THERAPY - OCCUPATIONAL O/P	146	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
THERAPY - PHYSICAL O/P	147	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
THERAPY - RESPIRATORY O/P	231	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
THERAPY - SPEECH LANGUAGE PATHOLOGY	155	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
THERAPY - VOCATIONAL REHABILITATION	107	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TRANSFUSION SERVICES - FULL	102	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TRANSFUSION SERVICES - LIMITED	189	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
WELL-CHILD	186	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

END STAGE RENAL DISEASE (ESRD)

TABLE 17C-1(a) CAPACITY	Existing	Add	Remove	Proposed
CHRONIC DIALYSIS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If application involves dialysis service with existing capacity, complete the following table:

TABLE 17C-1(b) PROCEDURES	Last 12 mos	2 years prior	3 years prior
CHRONIC DIALYSIS			

All Chronic Dialysis applicants must provide information requested on the following page in compliance with 10 NYCRR 670.6.

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Schedule 17C

Table 17C-2 - Projected Utilization of Services:

The number of projected "visits" should be listed in this table for each existing or proposed certified service. Visits should be estimated for the current, first and third year of the project.

Service Classification Code	Description	Current Year Visits	Year of Project (2011)	3rd Full Year of Project (2013)
068	Ambulatory Surgery Visits	Not Applicable	6,000	7,260
Total Visits		0	6,000	7,260

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Schedule 17D

Table 17D-1 D&TC Allocation of Operating Costs

Year 1 from 1/1/11 to 12/31/11

a	b	c	d	e	f	g	h	i	j	k
		Salary & Wages	Employee Benefits	Purchased Services	Supplies	General Costs	Donations	Total Before Distrib	Distrib of Facility Costs	Total after Distribution
328	TOTAL ADJUSTED COSTS	\$ 938,000	\$ 187,600	\$ 24,000	\$339,780	\$ 1,201,458		\$2,690,838		\$ 2,690,838
	I. Core Cost Centers									
329	a. Administration	\$ 200,000	\$ 40,000	\$ 24,000	\$ 12,000	\$ 165,222		\$ 441,222	131,081	\$ 572,303
330	b. Facility	\$ 40,000	\$ 8,000			\$ 568,312		\$ 616,312	\$(616,312)	
331	c. Patient Transportation							\$ -		
332	Subtotal	\$ 240,000	\$ 48,000	\$ 24,000	\$ 12,000	\$ 733,534	\$ -	\$1,057,534	\$(485,231)	\$ 572,303
	II. Patient Care Cost Centers									
	a. Multi-service, child health									
342	1. Medical									
343	2. Dental									
344	3. Laboratory									
345	4. X-ray									
346	5. Pharmacy									
	6. Mental Health									
347	7. Rehab Therapies									
348	8. Other Health	\$ 698,000	\$ 139,600		\$327,780	\$ 467,924		\$1,633,304	\$ 485,231	\$ 2,118,535
349	SUBTOTAL a	\$ 698,000	\$ 139,600	\$ -	\$327,780	\$ 467,924	\$ -	\$1,633,304	\$ 485,231	\$ 2,118,535

New York State Department of Health
Certificate Of Need Application

Schedule 17D

Table 17D-1 D&TC Allocation of Operating Costs

Year 2 from 1/1/12 to 12/31/12

a	b	c	d	e	f	g	h	i	j	k
		Salary & Wages	Employee Benefits	Purchased Services	Supplies	General Costs	Donations	Total Before Distrib	Distrib of Facility Costs	Total after Distribution
328	TOTAL ADJUSTED COSTS	\$ 1,090,890	\$ 218,178	\$ 25,647	\$341,376	\$ 1,210,389		\$2,886,480		\$ 2,886,480
	I. Core Cost Centers									
329	a. Administration	\$ 207,000	\$ 41,400	\$ 25,647	\$ 13,596	\$ 153,200		\$ 440,843	120,750	\$ 561,593
330	b. Facility	\$ 41,400	\$ 8,280			\$ 570,952		\$ 620,632	\$(620,632)	
331	c. Patient Transportation							\$ -		
332	Subtotal	\$ 248,400	\$ 49,680	\$ 25,647	\$ 13,596	\$ 724,152	\$ -	\$1,061,475	\$(499,882)	\$ 561,593
	II. Patient Care Cost Centers									
	a. Multi-service, child health									
342	1. Medical									
343	2. Dental									
344	3. Laboratory									
345	4. X-ray									
346	5. Pharmacy									
	6. Mental Health									
347	7. Rehab Therapies									
348	8. Other Health	\$ 842,490	\$ 168,498		\$327,780	\$ 486,237		\$1,825,005	\$ 499,882	\$ 2,324,887
349	SUBTOTAL a	\$ 842,490	\$ 168,498	\$ -	\$327,780	\$ 486,237	\$ -	\$1,825,005	\$ 499,882	\$ 2,324,887

New York State Department of Health
 Certificate Of Need Application

Schedule 17D

Table 17D-1 D&TC Allocation of Operating Costs

Year 3 from 1/1/13 to 12/31/13

a	b	c	d	e	f	g	h	i	j	k
		Salary & Wages	Employee Benefits	Purchased Services	Supplies	General Costs	Donations	Total Before Distrib	Distrib of Facility Costs	Total after Distribution
328	TOTAL ADJUSTED CO	\$1,129,071	\$ 225,814	\$ 27,467	\$436,172	\$1,219,907		\$3,038,431		\$ 3,038,431
	I. Core Cost Centers									
329	a. Administration	\$ 214,245	\$ 42,849	\$ 27,467	\$ 15,404	\$ 140,096		\$ 440,061	113,982	\$ 554,043
330	b. Facility	\$ 42,849	\$ 8,570			\$ 573,671		\$ 625,090	\$ (625,090)	
331	c. Patient Transportation							\$ -		
332	Subtotal	\$ 257,094	\$ 51,419	\$ 27,467	\$ 15,404	\$ 713,767	\$ -	\$1,065,151	\$ (511,108)	\$ 554,043
	II. Patient Care Cost Centers									
	a. Multi-service, child health									
342	1. Medical									
343	2. Dental									
344	3. Laboratory									
345	4. X-ray									
346	5. Pharmacy									
	6. Mental Health									
347	7. Rehab Therapies									
348	8. Other Health	\$ 871,977	\$ 174,395		\$420,768	\$ 506,140		\$1,973,280	\$ 511,108	\$ 2,484,388
349	SUBTOTAL a	\$ 871,977	\$ 174,395	\$ -	\$420,768	\$ 506,140	\$ -	\$1,973,280	\$ 511,108	\$ 2,484,388

**New York State Department of Health
Certificate Of Need Application**

Schedule 17E

Schedule 17 E - D&TC Statement of Revenue:

This schedule consists of the Detailed Monthly Cash Flow Analysis for the first year of operations (to be submitted as an attachment) and analysis of:

- Patient Revenue
- Other Operating Revenue
- Non-Operating Revenue
- Charges

Please see Attachment #14 for Monthly Cash Flow Analysis for First Year

Provide a breakdown of the utilization (threshold visits) by payer source. Provide supporting calculations for the rates assumed for each payer.

Please see Attachment #15 for Utilization by Payor

I. Patient Revenue	Commercial	Fee for Service	\$84,700
		Managed Care	\$2,696,850
	Medicare	Fee for Service	\$569,637
		Managed Care	
	Medicaid	Fee for Service	\$24,748
		Managed Care	\$53,059
	Private Pay		\$24,696
	OASAS		
	OMH		
	Charity Care		
Bad Debt			
Ordered Ambulatory Services			
	TOTAL		\$3,453,690
II. Other Operating Revenue	Sale of Literature		
	Sale of Supplies to Other than Patients		
	Telephone		
	Other		
	TOTAL		
III. Non-Operating Revenue	Gifts, Legacies, and Bequests		
	Grants		
	Other Non-Operating Revenue		
	NYS Bad Debt Charity Care Pool Distrib.		
	TOTAL		
IV. Total Revenue (I, II, and III)			\$3,453,690

Charges **			Total Charges	Adjustments
	Commercial	Fee for Service		
Managed Care				
Medicare		Fee for Service		

New York State Department of Health
 Certificate Of Need Application

Schedule 17E

Schedule 17 E - D&TC Statement of Revenue:

	Medicaid	Managed Care		
		Fee for Service		
		Managed Care		
	Private Pay			
	OASAS			
	OMH			
	Charity Care			
	Bad Debt			
	Ordered Ambulatory Services			
	All Other			
	TOTAL		\$0	\$0

LIST OF ATTACHMENTS

1. Certificate of Assumed Name
2. Lease Agreement
3. Anti-Kickback Statement
4. Organizational Chart
5. Articles of Organization
6. Operating Agreement
7. Bank Letter of Interest
8. Pro Forma Balance Sheet (Schedule 5)
9. Realtor Letters
10. Sources of Cash
11. Medical Director's Curriculum Vitae (Schedule 13B)
12. Procedure Expectations (Schedule 2)
13. Rent, Depreciation and Interest Expense (Schedule 13C)
14. Monthly Cash Flow Analysis for First Year (Schedule 17)
15. Utilization by Payor (Schedule 17)
 - A. Architectural Submission
 - Functional Space
 - Narrative
 - Floor Plan
 - Certification Letter
 - Building Total Square Footage

Certificate of Assumed Name
Pursuant to General Business Law, §130

1. NAME OF ENTITY

MOHAWK VALLEY EC, LLC

1a. FOREIGN ENTITIES ONLY. If applicable, the fictitious name the entity agreed to use in New York State is:

2. NEW YORK LAW FORMED OR AUTHORIZED UNDER (CHECK ONE):

- | | |
|---|---|
| <input type="checkbox"/> Business Corporation Law | <input checked="" type="checkbox"/> Limited Liability Company Law |
| <input type="checkbox"/> Education Law | <input type="checkbox"/> Not-for-Profit Corporation Law |
| <input type="checkbox"/> Insurance Law | <input type="checkbox"/> Revised Limited Partnership Act |

Other (specify law):

3. ASSUMED NAME

MOHAWK VALLEY ENDOSCOPY CENTER

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST BE NUMBER AND STREET. IF NONE, INSERT OUT-OF-STATE ADDRESS)

116 Business Park Drive
Utica, New York 13502

5. COUNTIES IN WHICH BUSINESS WILL BE CONDUCTED UNDER ASSUMED NAME

ALL COUNTIES (if not, circle county[ies] below)

Albany	Clinton	Genesee	Monroe	Orleans	Saratoga	Tompkins
Allegany	Columbia	Greene	Montgomery	Oswego	Schenectady	Ulster
Bronx	Cortland	Hamilton	Nassau	Otsego	Schoharie	Warren
Broome	Delaware	Herkimer	New York	Putnam	Schuyler	Washington
Cattaraugus	Dutchess	Jefferson	Niagara	Queens	Seneca	Wayne
Cayuga	Erie	Kings	Oneida	Rensselaer	Steuben	Westchester
Chautauqua	Essex	Lewis	Onondaga	Richmond	Suffolk	Wyoming
Chemung	Franklin	Livingston	Ontario	Rockland	Sullivan	Yates
Chenango	Fulton	Madison	Orange	St. Lawrence	Tioga	

6. INSERT THE ADDRESS OF EACH LOCATION WHERE BUSINESS WILL BE CARRIED ON OR TRANSACTED UNDER THE ASSUMED NAME.

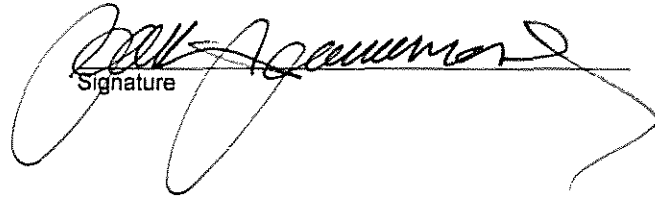
Use a continuous sheet, if needed. (The address must be set forth in terms of a number and street, city, state and zip code. Please note that the address(es) reflected in paragraph 6 must be within the county(ies) circled in paragraph 5. If the entity does not have a specific location where it will conduct business under the assumed name please check the statement below.)

116 Business Park Drive
Utica, New York 13502

No New York State Business Location

INSTRUCTIONS FOR SIGNATURE: If corporation, by an officer; if limited partnership, by a general partner; if limited liability company, by a member or manager or by an authorized person or attorney-in-fact for such corporation, limited partnership, or limited liability company. If the certificate is signed by an attorney-in-fact, include the name and title of the person for whom the attorney-in-fact is acting. (Example, John Smith, attorney-in-fact for Robert Johnson, president.)

Garth Carranone, DO
Name of Signer


Signature

Member

Title of Signer

CERTIFICATE OF ASSUMED NAME
OF

MOHAWK VALLEY EC, LLC

(Insert Entity Name)

Pursuant to §130, General Business Law

FILER'S NAME AND MAILING ADDRESS

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$25 fee. The Department of State also collects the following, additional, county clerk fees for each county in which a **corporation** does or transacts business: \$100 for each county within New York City (Bronx, Kings, New York, Queens and Richmond) and \$25 for each county outside New York City. All checks over \$500 must be certified.

(For office use only)

LEASE AGREEMENT

THIS LEASE is entered into as of this ___ day of _____ between 116 BUSINESS PARK ASSOCIATES, LLC (“Landlord”), with an address at 110 Business Park Drive, Utica, New York 13502 and MOHAWK VALLEY EC, LLC (“Tenant”) , with an address at 110 Business Park Drive, Utica, New York 13502.

1. Premises. Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the premises constituting approximately 11,436 square feet located on the second floor of the building located at 116 Business Park Drive, Utica, New York (the “Building”) as shown on the Floor Plan annexed to this Lease as Exhibit A (the “Premises”). As appurtenant to the Premises, Tenant shall have the right of non-exclusive use, in common with others of (a) all driveways, parking spaces and footways and of (b) such loading facilities, elevators and other common facilities as exist or as may be constructed and designated as common area in the Building, from time to time, by Landlord, all to be subject to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by Landlord.
2. Term and Option to Renew. The initial term of this Lease shall begin on the Term Commencement Date established under Section 3 and shall expire 10 years following the Rent Commencement Date established under Section 3 (the “Initial Term”). So long as Tenant is not in default under this Lease Tenant shall have the option of renewing this Lease for two additional five year terms (each, a “Renewal Term”) at the same terms and conditions as contained in this Lease, except that Base Rent during each Renewal Term shall increase as set forth in Section 6. Tenant shall give notice in writing, by certified mail or overnight delivery, to the Landlord of its intention to exercise such renewal option at least nine months prior to the expiration of the then-current term of the Lease.
3. Lease Commencement Dates. The “Term Commencement Date” shall be the date on which the New York Department of Health issues a certificate of need (“CON”) and authorizes construction of an ambulatory surgery center at the Premises. The “Rent Commencement Date” shall be the first business day after the date upon which the Tenant receives all regulatory approvals to commence operations of an ambulatory surgery center providing endoscopy services at the Premises and the Landlord and Tenant shall have reasonably agreed that the Premises are ready for occupancy and the commencement of Tenant’s business.
4. Use. The Premises shall be used for the operation of an ambulatory surgery center and for no other purpose without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned.
5. Construction of Surgery Center. Landlord shall, at its sole cost and expense, construct an ambulatory surgery center at the Premises pursuant to the plans and specifications provided by Tenant. All construction shall be performed in a first class and workmanlike manner in compliance with all applicable Federal, state and local laws, rules, regulations, orders and codes.

6. Rent. During the term of this Lease, Tenant shall pay monthly rent as set forth below. All rent shall be paid in advance on the first day of each month, at the office of the Landlord or such other place as Landlord may designate, without set off or deduction whatsoever. Should Tenant fail to pay any installment of rent by the 10th day of the month, then Tenant, in addition to any other remedies available to Landlord hereunder, shall pay a late fee equal to 5% of the delinquent monthly installment.

<u>Rental Period</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
Initial Term	\$480,312	\$40,026
First Renewal Term	\$528,343	\$44,029
Second Renewal Term	\$554,760	\$46,230

7. Utilities. Tenant shall pay for all utility services rendered or furnished to the Premises, including water, heat, gas, electricity and power.
8. Increases in Real Estate Taxes. During the Lease Term, Tenant shall pay to Landlord as additional rent an amount equal to Tenant's Proportionate Share of the amount by which real estate taxes, assessments and all other governmental charges or levies of any kind, general and special, ordinary and extraordinary, foreseen and unforeseen which may be charged or imposed by any governmental authority on the real property and improvements, including the Building, for each calendar year ("Taxes") exceed Base Taxes. "Base Taxes" shall mean all city, county and school taxes attributable to the year in which the Initial Term commences. Landlord will submit to Tenant a statement of the increase in Taxes for the fiscal year of each taxing jurisdiction. Within 10 days after Tenant's receipt of that statement (and on the first day of each month thereafter without notice or invoice) Tenant shall pay to Landlord an amount equal to 1/12 of Tenant's Proportionate Share of the increase in Taxes. A copy of a tax bill or assessment bill submitted by Landlord to Tenant shall be sufficient evidence of the amount of Taxes levied or assessed. For purposes of this Lease "Tenant's Proportionate Share" shall mean 44%, which represents a fraction, the numerator of which is the rentable area of the Premises and denominator of which is the rentable area of the Building (currently 26,003 square feet).
9. Increases in Operating Costs.
- a. Beginning on the first anniversary of the Rent Commencement Date, Tenant shall pay to Landlord, as additional rent, on the first day of each month, an amount equal to one-twelfth (1/12th) of Tenant's Proportionate Share of the estimated amount by which Operating Costs for each Computation Year exceed Base Operating Costs. "Computation Year" shall mean each 12-month period during the term of this Lease beginning on the Rent Commencement Date. "Base Operating Costs" shall mean the Operating Costs for the 12-month period beginning on the Rent Commencement Date.
 - b. Following the end of the Computation Year, Landlord shall furnish to Tenant a comparative statement showing Tenant's Proportionate Share of the increase in Operating Costs during the period over the Base Operating Costs and the amounts paid by Tenant (based on Landlord's estimate of increases in Operating Costs) attributable to such year. Any overpayment or underpayment by Tenant shall be promptly adjusted by payment within 15 days of the balance of any

underpayment for such year by Tenant to Landlord, or by Landlord to Tenant of the balance of any overpayment for such year.

- c. "Operating Costs" shall mean all costs incurred and expenditures of whatever nature made by Landlord in the operation, maintenance and management of the Building, which, in accordance with accepted principles of sound accounting practice as applied to the operation and maintenance of first class office buildings are properly chargeable to the operation, maintenance and management of the Building. Operating Costs shall include, but not be limited to, the following: (a) the costs of operating and maintaining the Building and the Building's common areas, exterior parking and landscaped areas, including, but without limiting the generality of the foregoing, cost of janitorial and cleaning services, casualty and liability insurance, repairs, painting, refinishing, lighting, utilities, sanitary control and facilities, removal of waste and refuse, fire and security protection, heating, ventilating and air-conditioning, cost of all energy and water used in or at the Building, the maintenance and repair of lighting, utilities and heating, ventilating and air-conditioning systems and equipment, the cost, as reasonably amortized by Landlord, with annual interest at 9% per annum, of any capital improvements made to the Building, repair and/or replacement of water lines, sanitary and storm sewer lines, the cost of holiday and other decorations, and related costs to implement such services, plus (b) other expenses customarily incurred in connection with the operation and maintenance of a first-class office building.

10. Care and Maintenance of the Premises. Tenant shall, at its own expense and at all times maintain the Premises in good and safe condition, including any systems or equipment installed by Tenant upon the Premises and shall surrender the same, at termination hereof in as good condition as received, normal wear and tear excepted. Tenant shall be responsible for all repairs required except for roof, building shell, building systems including HVAC, plumbing and electric and other major structural repairs, which shall be the responsibility of Landlord; provided, however, that Tenant shall be responsible for all systems that support only the Premises including, without limitation, specialty HVAC, plumbing and electric systems. Landlord also shall be responsible for maintaining all exterior common areas, sidewalks, driveways and exterior landscaping.
11. Alterations and Fixtures. Tenant, shall not, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned, make any alterations, additions or improvements, in, to, or about the Premises. Tenant agrees that any improvements and alterations made by it shall immediately become the property of Landlord and shall remain upon the Premises in the absence of a written agreement to the contrary. All alterations to the Premises will be at the Tenant's own cost and expense. Damage done to the Premises by the removal of such property shall be repaired at the expiration of the Lease Term at the Tenant's own cost and expense. Tenant shall have the right to remove movable trade fixtures. Tenant shall indemnify and hold harmless Landlord from all claims, losses, damages, liabilities, liens, and expenses (including reasonable attorneys' fees) incurred or suffered by Landlord in connection with Tenant making any alteration, addition or improvement to the Premises. Tenant shall not commence any construction work without first delivering to Landlord a policy or policies of workers' compensation insurance, comprehensive general liability and property damage insurance, naming Landlord as additional insureds for any and all contractors and sub-contractors working on the Premises.

12. Compliance with Orders of Public Authorities. Tenant shall comply with all laws, ordinances, rules, regulations or requirements of all federal, state or municipal governments, and every department or bureau thereof applicable to the Premises, and shall not do or permit to be done any act upon the Premises whereby the hazard of fire or the rate of fire insurance upon the Premises may be increased or which shall be in violation of the rules of the Board of Fire Underwriters or the provisions of the New York State standard form of fire insurance policies.
13. Assignment and Subletting. Tenant shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Landlord. Any such assignment or subletting without consent shall be void and, at the option of Landlord, may terminate this Lease.
14. Entry and Inspection. Tenant shall permit Landlord or Landlord's agents to enter upon the Premises at reasonable times and upon reasonable notice, (or, in the event of an emergency without notice) for the purpose of inspecting the same, and will permit Landlord at any time within 120 days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "To Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.
15. Liability of Landlord. Landlord shall not be liable to Tenant for any loss, damage or expenses of any kind resulting from, and no claim shall be made against Landlord by Tenant for: (a) any injury or damage to person or property occurring in, on or about the Premises; (b) the theft, loss or destruction of any personal property contained in the Premises or any storage rooms provided by Landlord, or of any automobile (or personal property contained in any automobile) parked in any parking areas designated by Landlord for parking; (c) the necessity of repairing the Premises or any other portion of the Building; (d) fire or other casualty; (e) any overflow or leakage upon or into the Premises of water, rain, snow, steam, gas or electricity, or any breakage or bursting of pipes, conduits or other plumbing fixtures or appliances; or (f) any loss or damage to property of the Tenant entrusted with Landlord's employees; provided, however, that the foregoing exculpatory provisions shall not apply to loss, damage or expense resulting from the willful or negligent act or omission of Landlord or its agents. All references to Tenant in the preceding sentence shall be deemed to include Tenant's employees, agents and other persons claiming the right to be in the premises or the Building under or through Tenant. It is specifically understood and agreed that there shall be no personal liability of Landlord in respect to any of the covenants, conditions or provisions of this Lease; in the event of a breach or default by Landlord of any of its obligations under this Lease, Tenant shall look solely to the equity of the Landlord in the Building for the satisfaction of Tenant's remedies.
16. Indemnification. Tenant shall indemnify and save harmless Landlord from any and all liability, damages, expenses, fees, penalties, actions, causes of action, suits, costs, claims or judgments in connection with loss of life, personal injury or damage to property (a) arising from or out of any occurrence in, upon or at the Premises; (b) arising from or out of the occupancy or use by Tenant of the Premises or any part thereof; (c) arising from any breach of any provision of this Lease, including the enforcement thereof by Landlord; or (d) occasioned wholly or in part by any act or omission of Tenant, its agents, employees, customers and invitees.

17. Tenant Insurance

- a. Liability Insurance. Tenant covenants and agrees, at its own cost and expense, to keep in full force and effect during the entire term of this Lease, a policy of general liability insurance with an insurance company qualified to do business in New York State which policy shall insure against claims for personal injury, death or property damage with such limits as may be reasonably requested by Landlord from time to time but not less than \$2,000,000 in case of bodily injury or death and in the sum of \$1,000,000 in case of property damage, naming Landlord as an additional named insured and containing an endorsement that the policy will not be cancelled or reduced in scope of coverage or amount of coverage until 30 days after written notice to Landlord. Tenant shall provide Landlord with a certificate of such insurance upon the execution of this Lease and upon each renewal of such insurance policy. Failure to deliver such certificates shall be considered a material breach of this Lease Agreement.
- b. Property Insurance. Tenant covenants and agrees, at its own cost and expense, to keep in full force and effect during the entire term of this Lease fire and extended coverage insurance with an insurance company qualified to do business in New York State, based upon full replacement cost of Tenant's personal property and fixtures. Such insurance shall contain an agreement by the insurance company that the policy or policies will not be cancelled or the coverage changed without 30 days prior written notice to Landlord. The Tenant shall provide Landlord with a certificate of such insurance upon the execution of this Lease and upon each renewal of such insurance policy. Failure to deliver such certificates shall be considered a material breach of this Lease Agreement.

18. Waiver of Subrogation. Landlord and Tenant hereby waive all rights of subrogation against each other with respect to loss by fire or other casualty, and any insurance policies kept and maintained by the parties, shall be so written as to recognize such waiver.

19. Parking. Shall be available for Tenant's use in common with the other tenants.

20. Subordination. This Lease shall be subject to and subordinate to any mortgage or mortgages now in force or which shall at any time be placed upon the Premises or any part thereof. Tenant agrees that it will, upon demand, execute and deliver such instruments as necessary to effect more fully such subordination of this Lease to the lien of any such mortgage or mortgagee as shall be desired by any mortgagee or proposed mortgagee.

21. Damage. In the event of damage to the Premises by fire or other casualty, Landlord shall cause such damage to be repaired, but if the Premises are so damaged that Landlord decides not to rebuild, the term of this Lease shall cease and the accrued rent shall be paid up to the time of the fire or other casualty. If the Premises are wholly or partially fit for occupancy by Tenant during the period of repairs, then the rent shall be apportioned based upon the part fit for occupancy. No claim shall be made by the Tenant in any case for compensation or damages by reason of interruption of its business through any such destruction or damage to the Premises or arising from the necessity of repairing any portion of the Premises as herein provided.

22. Default and Landlord's Rights. The following shall constitute an "Event of Default":

- a. Default in the payment of monthly rent or additional rent after 10 days written notice;
- b. Default in the observance or performance by Tenant of any other term, covenant or condition of this Lease after 30 days written notice;
- c. If the Premises are abandoned or vacated for more than 30 days;
- d. If the Tenant shall make a general assignment for the benefit of creditors, or if a trustee or receiver of any of Tenant's property be appointed; or
- e. If Tenant shall file a voluntary petition for bankruptcy or arrangement or reorganization, or if an involuntary petition be filed against Tenant which shall not be vacated within 30 days after such filing.

Subject to Section 23 below, upon an Event of Default, Landlord shall have the right to terminate this Lease by giving 10 days written notice to Tenant and upon the expiration of said 10 days this Lease shall expire as if that day were the date herein specifically fixed for the expiration of the term of this Lease. Landlord shall have the right, whether or not this Lease is terminated as provided above, to enter and repossess the Premises by summary proceeding, or otherwise, and to dispossess and remove therefrom any and all occupants and their effects without being liable to prosecution or damages therefor, and to hold the Premises as if this Lease had ceased by expiration through maturity of the term above specified.

If Landlord shall not realize a sufficient sum each month from any rents collected and received from said Premises after paying all the costs and expenses of any repairs, alterations or additions and the expenses of any reletting, including, without limitation brokerage fees and reasonable attorneys' fees, and the collection of rent accruing therefrom to satisfy the rental herein provided to be paid by Tenant, Tenant will satisfy and pay such deficiency each month upon demand, but shall be entitled to reimbursement for sums so paid out of any surplus later arising.

23. Right of Reentry. Notwithstanding the provisions of Section 22 hereof, Landlord acknowledges that its rights of reentry into the Premises do not confer on it the authority to operate a hospital as defined in Article 28 of the Public Health Law on the Premises and agrees that it will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, New York 12237 notification by certified mail of its intent to reenter the Premises or to initiate dispossess proceedings or that this Lease is due to expire, at least 30 days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before expiration of this Lease. Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossess proceedings and 60 days prior to the expiration of this Lease, Tenant shall immediately notify by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, New York 12237, of the receipt of such notice or service of such process or that this Lease is about to expire.

24. Quiet Enjoyment. Tenant, upon paying the rent and observing and performing all the terms, covenants and conditions contained in this Lease on Tenant's part to be observed and performed, shall peaceably and quietly enjoy the Premises without hindrance by Landlord.
25. Surrender of Premises. Tenant covenants, at the expiration or other termination of this Lease, to remove its property from the Premises and to leave the Premises in good repair, order and condition, ordinary wear and tear and damage by fire or other casualty excepted.
26. Mechanics' Liens. If any mechanics' or other liens, or orders for payment of money shall be filed against the Premises by reason of or arising out of any labor or materials furnished or alleged to have been furnished, or to be furnished, to or for Tenant at the Premises, Tenant shall within 10 days after notice of filing thereof cause the same to be cancelled and discharged of record, by bond or otherwise at the expense of Tenant.
27. Right of Landlord to Cure Tenant's Default. If Tenant defaults in the making of any payment or in doing any act required under this Lease, Landlord may make such payment or do such act, any expense thereof shall be paid by Tenant with interest at the prime rate reported in The Wall Street Journal from the date paid and shall constitute additional rent and be payable with the next monthly installment of rent.
28. Waiver of Jury Trial. Landlord and Tenant covenant and agree that in any action, proceeding or counterclaim brought by either Landlord or Tenant against the other on any matter whatsoever arising out of, under or by virtue of the terms of this Lease or Tenant's occupancy, Landlord and Tenant shall and do hereby waive trial by jury.
29. No Oral Changes. This Lease may not be changed or terminated orally.
30. Estoppel Certificates. Tenant agrees, at any time and from time to time, upon not less than 10 days prior written notice by Landlord to execute, acknowledge and deliver to Landlord an estoppel certificate.
31. Remedies Cumulative. No reference to any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity.
32. No Waiver. No failure by Landlord to insist upon strict performance of any agreement, term, covenant, or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or any continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by Landlord of any breach by Tenant under this Lease shall constitute a waiver of any subsequent breach under this Lease.
33. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of New York. If any provisions of this Lease shall, to any extent, be held invalid or unenforceable, the remainder of this Lease shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.
34. Entire Agreement. This Lease contains the entire agreement of the parties with regard to the Premises. There are no oral agreements existing between them. This Lease may be amended by and only by an instrument executed and delivered by each party hereto.

35. Successors and Assigns. Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective permitted successors and assigns. In the event Landlord sells or transfers the Premises to a third party, this Lease shall continue in full force and effect and such purchaser or transferee shall be bound by all of the terms and conditions contained herein.
36. Holdover. Should the Tenant continue to occupy the Premises after the expiration of the Term hereof or after a forfeiture has occurred against the consent of the Landlord, such tenancy shall be from month-to-month and such month-to-month tenancy shall be under all the terms, covenants and conditions of this Lease and at one and one-half (1.5) times the fixed monthly rental set forth hereunder.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

116 BUSINESS PARK ASSOCIATES,
LLC

By: _____
Member

MOHAWK VALLEY EC, LLC

By: _____
Member

MOHAWK VALLEY EC, LLC

October 27, 2009

State of New York Health Department
Corning Tower
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12237

Re: Mohawk Valley EC, LLC

Ladies and Gentlemen:

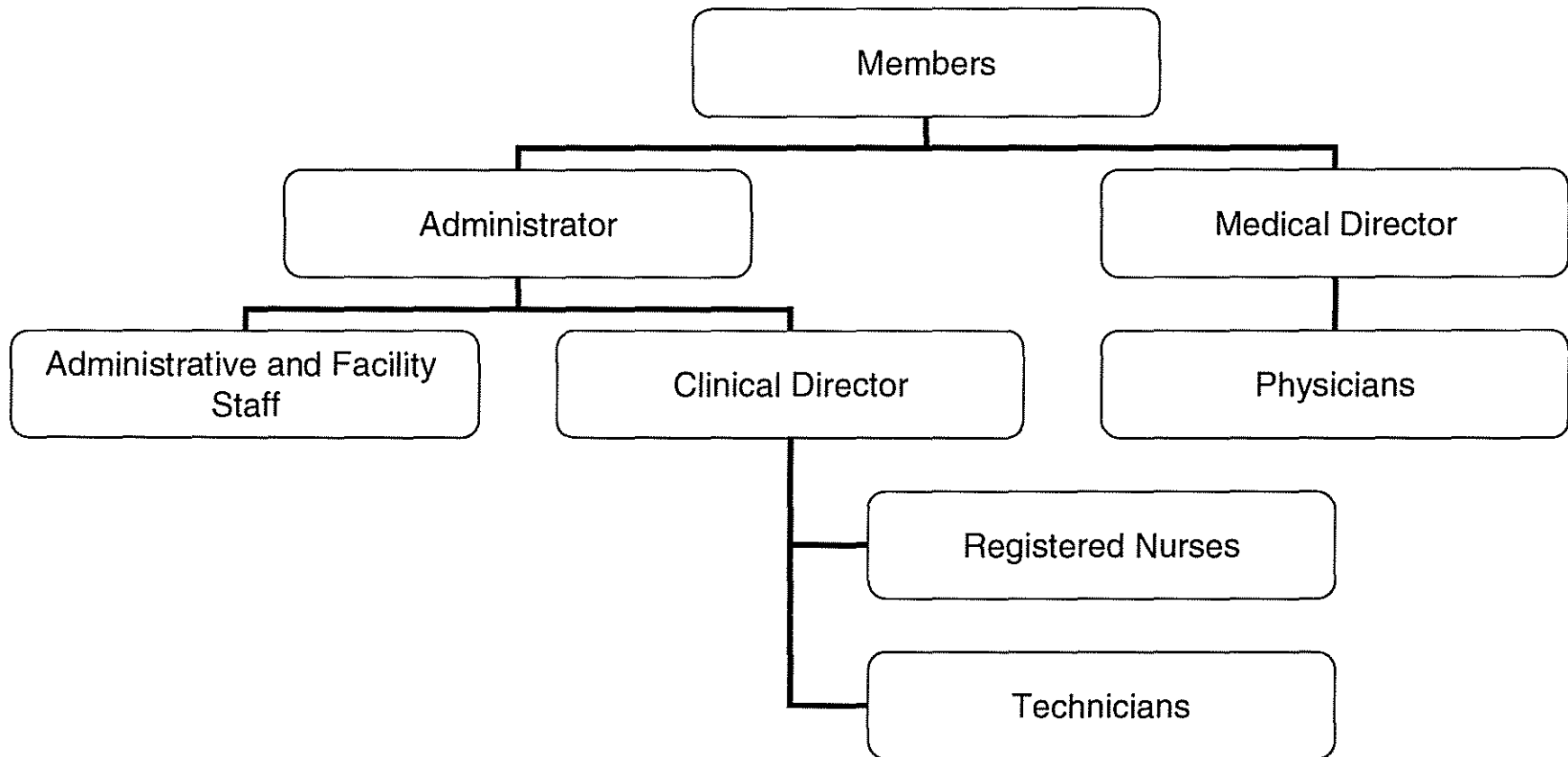
This letter will confirm that in structuring the Mohawk Valley EC, LLC ambulatory surgery center project we have considered with our legal counsel both the Federal and New York State anti-kickback and self-referral laws. On this basis we have concluded that proceeding with the project is appropriate.

Very truly yours,

MOHAWK VALLEY EC, LLC


Carol J. Garramone, DO, Member

Mohawk Valley EC, LLC



FILING RECEIPT

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ENTITY NAME: MOHAWK VALLEY EC, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ONEI

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FILED:10/15/2009 DURATION:***** CASH#:091015000051 FILM #:091015000047

FILER:

EXIST DATE

WOOD & SMITH P.C.
110 WEST FAYETTE STREET

10/15/2009

SYRACUSE, NY 13202

ADDRESS FOR PROCESS:

THE LLC
110 BUSINESS PARK DRIVE
UTICA, NY 13502

REGISTERED AGENT:

=====

SERVICE COMPANY: NATIONWIDE INFORMATION SERVICES, INC. SERVICE CODE: 27 *

FEEs	235.00	PAYMENTS	235.00
	-----		-----
FILING	200.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	235.00
HANDLING	25.00	OPAL	0.00
		REFUND	0.00

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08C18175

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DOS-1025 (04/2007)

ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC

Under Section 203 of the Limited Liability Company Law

1. The name of the limited liability company is: Mohawk Valley EC, LLC.
2. The office of the limited liability company is to be located in the County of Oneida, State of New York.
3. The Secretary of State is designated as agent of the limited liability company 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 limited liability company served upon the Secretary is:

c/o the Company
110 Business Park Drive
Utica, New York 13502

4. The limited liability company may establish classes, or series of classes, of members with such relative rights, designations, qualifications, preferences and duties as shall be set forth from time-to-time in its Operating Agreement.

IN WITNESS WHEREOF, these Articles of Organization have been subscribed to this 14th day of October 2009 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.



Bruce A. Smith, Organizer
Wood & Smith, P.C.
One Lincoln Center, Suite 1110
110 West Fayette Street
Syracuse, New York 13202

To be filed upon issuance of CON

**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 214 of the Limited Liability Company Law

1. The name of the limited liability company (the “Company”) is Mohawk Valley EC, LLC.
2. The date of the filing of the Articles of Organization is October __, 2009.
3. The amendments effected by this Amended and Restated Articles of Organization are as follows:
 - a. To subject any change in the management structure of the Company to the prior approval of the New York State Department of Health;
 - b. To limit the powers and purposes of the Company to the ownership and operation of a single specialty ambulatory surgery center providing endoscopy services licensed pursuant to New York Public Health Law Article 28;
 - c. To specify the address of the principal office of the Company;
 - d. To subject changes to membership interests and voting rights in the Company to the provisions set forth in New York Public Health Law Section 2801-a(4)(b); and
 - e. To subject certain membership interest and voting rights in the Company to approval by the New York State Department of Health’s Public Health Council.
4. To accomplish amendments 3(a) and (b), as stated above, Article 5 of the Articles of Organization of the Company is hereby amended to read as follows:

“5. The Company shall be managed by its Members. This Article may not be deleted, modified or amended without the approval of the New York Department of Health.”
5. To accomplish amendment 3(b), as stated above, a new Article 6 of the Articles of Organization is hereby added to read as follows:

“6. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center licensed under Article 28 of the Public Health Law located at 116 Business Park Drive, Utica, New York 13502 providing endoscopy services.”
6. To accomplish amendment 3(c), as stated above, Article 2 of the Articles of Organization is hereby amended to read as follows :

“2. The office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502.”

7. To accomplish amendment 3(d), as stated above, a new Article 7 of the Articles of Organization is hereby added to read as follows:

“7. Any transfer, assignment or other disposition of 10% or more of any membership interest or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.”

8. To accomplish amendment 3(e), as stated above, a new Article 8 of the Articles of Organization is hereby added to read as follows:

“8. No person may own 10% or more of any membership interests or voting rights in the Company unless approved by the Public Health Council.”

9. The Articles of Organization is hereby restated to set forth its entire text as amended:

**ARTICLES OF ORGANIZATION
OF
MOHAWK VALLEY EC, LLC**

Under Section 203 of the Limited Liability Company Law

1. The name of the limited liability company (the “Company”) is: Mohawk Valley EC, LLC.
2. The office of the Company is to be located in the County of Oneida, State of New York at 116 Business Park Drive, Utica, New York 13502.
3. The Secretary of State is designated as agent of the Company 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 Company served upon the Secretary is:

c/o the Company
110 Business Park Drive
Utica, New York 13502

4. The Company may establish classes, or series of classes, of members with such relative rights, designations, qualifications, preferences and duties as shall be set forth from time-to-time in the Company’s Operating Agreement.
5. The Company shall be managed by its Members. This Article may not be deleted, modified or amended without the approval of the New York Department of Health.
6. The Company is formed for the sole purpose of owning and operating a single specialty ambulatory surgery center licensed under Article 28 of the Public Health Law located at 116 Business Park Drive, Utica, New York 13502 providing endoscopy services.
7. Any transfer, assignment or other disposition of 10% or more of any membership interest or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law.

8. No person may own 10% or more of any membership interests or voting rights in the Company unless approved by the Public Health Council.

IN WITNESS WHEREOF, these Amended and Restated Articles of Organization have been subscribed this ____ day of _____.

_____, Member

MOHAWK VALLEY EC, LLC
OPERATING AGREEMENT
(No Article 28 Powers)

THIS OPERATING AGREEMENT is entered into as of November 10, 2009 by and among STANLEY P. WEISELBERG, M.D., NORMAN R. NESLIN, M.D., ROBERT R. PAVELOCK, M.D., BRADLEY F. SKLAR, M.D., RICHARD CHERPAK, M.D., GARTH J. GARRAMONE, D.O. and BRETT GANDHI, M.D.

In consideration of the mutual promises contained herein the parties hereby agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Company Law, as the same may be amended from time to time.
- 1.2. "Additional Funding Requirement" shall mean additional funds called pursuant to Section 4.2 hereof.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 4.5 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the ambulatory surgery center to be developed by the Company and located at 116 Business Park Drive, Utica, New York 13502.
- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.
- 1.9. "Company" shall mean Mohawk Valley EC, LLC, a New York limited liability company and its successors.
- 1.10. "CON" shall mean a certificate of need issued by the New York State Department of Health's Public Health Council with respect to the Center.
- 1.11. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP and its successors.
- 1.12. "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to

this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.

- 1.13. "Health Department" shall mean the New York State Department of Health.
- 1.14. "Initial Capital Contributions" shall mean the Capital Contributions to be made by the Members upon issuance of the CON as provided in Section 4.2.
- 1.15. "Majority Vote of the Members" shall mean the affirmative vote of a majority of all Members.
- 1.16. "Member" shall mean Stanley P. Weiselberg, M.D., Norman R. Neslin, M.D., Robert R. Pavelock, M.D., Bradley F. Sklar, M.D., Richard Cherpak, M.D., Garth J. Garramone, D.O., Brett Gandhi, M.D. and such other Persons who are admitted to the Company as additional or substitute Members.
- 1.17. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and any right to vote or participate in management of the Company.
- 1.18. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.19. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.20. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.21. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.
- 1.22. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.
- 1.23. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.24. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.25. "PHC" shall mean the New York State Department of Health's Public Health Council.

- 1.26. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.27. "Supermajority Vote of the Members" shall mean the affirmative vote of a number of Members equal to the total number of Members minus two.
- 1.28. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or a part of a Member's Membership Interest.
- 1.29. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.30. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 7.1 hereof.
- 2.2. Name. The name of the Company shall be "Mohawk Valley EC, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed to develop a single-specialty ambulatory surgery center specializing in endoscopic procedures to be located at 116 Business Park Drive, Utica, New York including, without limitation, preparing, submitting and prosecuting a CON application to establish and construct such ambulatory surgery center and to carry on, conduct or transact any business or other activities which a limited liability company formed under the Act may carry on, conduct or transact.

3. MEMBERS; CONTROL AND MANAGEMENT

- 3.1. Membership Interest. The number of Units of Membership Interest owned by each Member and their respective Sharing Ratios is set forth on Exhibit A attached hereto.
- 3.2. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.
- 3.3. Management of the Company. The business and affairs of the Company shall be managed by the Members.

3.4. Action by Members

- a. For voting purposes each Member shall have one vote.
- b. The following actions shall require a Supermajority Vote of the Members: (i) adopt, amend, restate or revoke the Articles of Organization or this Agreement; (ii) approve the dissolution of the Company; (iii) approve the sale, exchange or lease of all or substantially all of the Company's assets; (iv) make a call for Additional Funds under Section 4.2 or require the delivery of personal guaranties under Section 4.4; (v) borrow money or incur expenses in excess of \$50,000; (vi) approve a merger or consolidation of the Company with any other entity; (vii) withdraw the Company's CON application; or (viii) admit a new Member.
- c. Except as provided in subsection (b) above or as otherwise required under this Agreement, all other decisions of the Company shall require a Majority Vote of the Members.
- d. No act of a Member shall bind the Company unless such act has been authorized by a sufficient vote of Members as set forth in this Section.

3.5. Action by Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by Members whose voting power is sufficient to authorize such action.

3.6. No Exclusive Duty. The Members may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Members or to the income or proceeds derived therefrom. No Member shall incur any liability to the Company or to any of the other Members as a result of engaging in any other business or venture.

3.7. Transactions with the Company. A Member may be compensated for services provided to the Company. Members are also expressly permitted to make loans to the Company and charge a market interest rate on such loans.

4. CAPITAL CONTRIBUTIONS

4.1. Initial Capital Contributions. Following the issuance of the CON each Member shall make an Initial Capital Contribution in the amount set forth on Exhibit A at times and in increments as directed by a Majority Vote of the Members in order to fund the Members' share of the equity and working capital requirements associated with the development and operation of the Center.

4.2. Additional Funding Requirement. If the Members by a Supermajority Vote of the Members determine that the Company requires additional funds, such funds shall be contributed by the Members in proportion to their Sharing Ratios within 10 days following the date of the call ("Additional Funds"). At the direction of the Members such Additional Funds shall either be in the form of a loan or Capital Contribution to the Company. For purposes of this Agreement, Additional Funds called for under this Section shall be referred to as the "Additional Funding Requirement."

4.3. Remedies for Failure to Fund. If any Member shall fail to pay his Initial Capital Contribution or Additional Funding Requirement when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 30 days in which to cure such default. If, after 30 days, the Defaulting Member has not cured such default, then upon a Majority Vote of the Members (excluding the Defaulting Member), the Company may (a) exercise its Right of Termination under Section 6.6; (b) apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) enforce the Defaulting Member's obligation to pay his Initial Capital Contribution or Additional Funding Requirement and recover attorneys' fees and costs of collection in addition to interest at 15% per annum accruing from the date the Capital Contribution or Additional Funding Requirement was first required to have been paid.

4.4. Personal Guaranties.

- a. In order to obtain bank loans or other third party financing for the Company, or to secure other Company obligations, each Member shall execute and deliver one or more personal guaranties in such amounts, at such times and in such form as directed by a Supermajority Vote of the Members (a "Member Guaranty"). If any Member shall fail to deliver his Member Guaranty within 10 days following request, the Company may (a) redeem the Membership Interest of the Defaulting Member for \$1.00 and seek damages against the Defaulting Member or (b) enforce the Member's obligation to deliver his Member Guaranty and recover attorneys' fees.
- b. In the event one or more Members who have delivered a Member Guaranty pays in excess of his share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection. A Member who is not required to deliver a personal guaranty shall not be considered a Nonpaying Member hereunder.

4.5. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.

- 4.6. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.
- 4.7. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.
- 4.8. Treatment of Issuance of Membership Interests. Upon a Supermajority Vote of the Members, the issuance of a Membership Interest to a new Member in exchange for cash paid to the Company shall be deemed to be a sale of a proportionate part of each existing Member's Membership Interest to the new Member and such cash shall be distributed to the existing Members in accordance with their respective Sharing Ratios.

5. ALLOCATIONS AND DISTRIBUTIONS

- 5.1. Allocation of Net Profits and Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.
- 5.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.3. Distributions. Net available cash flow of the Company shall be distributed to the Members at such times and in such amounts as the Members shall determine.
- 5.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 5.5. Minimum Gain Chargeback. If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 5.6. Partner Minimum Gain Chargeback. If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.

- 5.7. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 5.8. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.
- 5.9. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.
- 5.10. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such Treasury Regulations.
- 5.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 5.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 5.14. Records, Audits, and Reports. The Company shall maintain records and accounts of all operations and expenditures of the Company.
- 5.15. Returns and Other Elections. The Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Members.

6. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 6.1. Covenant Against Withdrawal. No Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.

- 6.2. Restriction on Transfer; Conditions to Transfer. Except as otherwise permitted by this Agreement, no Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, including an Economic Interest, unless such Transfer has been made pursuant to the terms of this Article or has been approved by a Supermajority Vote of the Members. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Member harmless from and against any and all claims, liabilities, costs and expenses including, without limitation, reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section.
- 6.3. Permitted Transfers. A Member may Transfer all or a part of his Membership Interest to any one or more of the following: (a) the Company or (b) a Person approved by a Supermajority Vote of the Members.
- 6.4. Transferee Not a Member. Notwithstanding anything to the contrary contained in this Agreement, no Person acquiring all or a portion of a Membership Interest shall become a Member unless such person is approved by a Supermajority Vote of the Members.
- 6.5. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.
- 6.6. Termination of Membership; Involuntary Withdrawal. The Company shall have the right, which may be exercised at the Company's sole discretion, to terminate the membership of a Member under the circumstances described below (the "Right of Termination"). A termination of a Member's membership under this Section shall be considered an involuntary withdrawal from the Company by such Member. If the Company elects to exercise its Right of Termination, the Company shall provide written notice of such election to the affected Member (the "Terminated Member"), which notice shall set forth the date on which the membership has terminated or will terminate (the "Termination Date"). Effective on the Termination Date, without any further action required by the Terminated Member or the Company (a) the Terminated Member shall cease being a Member of the Company and shall have no further rights under this Agreement except the right to receive a Withdrawal Payment as provided in Section 6.7 hereof and (b) the Terminated Member's Membership Interest, and all rights therein, shall automatically transfer to the Company. A Majority Vote of the Members shall be required to cause the Company to exercise its Right of Termination under this Section.
- a. Right to Terminate if Member Ceases to be an DDM Partner or Employee. If a Member ceases to be a partner or employee of DDM the Company shall have a continuing right to exercise its Right of Termination with respect to such Member. The Termination Date shall be the date the Member's partnership or employment with DDM terminated or the date he

ceased to be a DDM partner or employee, unless a later date is set by the Company. If a Member elects to voluntarily withdraw as a partner of DDM, the Company may exercise its Right of Termination at any time on or after the date on which such Member first notified DDM of his intent to withdraw.

- b. Right to Terminate on Other Events. The Company shall have a continuing right to exercise its Right of Termination with respect to any Member who has (i) been adjudicated a bankrupt, voluntary or involuntary; (ii) made an assignment for the benefit of creditors; (iii) applied for a judicial dissolution of the Company under the Act; or (iv) defaults under this Agreement, which default is not cured within 30 days following written notice.
- 6.7. Withdrawal Payment to Terminated Member. A Member whose membership has been terminated under Section 6.6 shall be entitled to receive a Withdrawal Payment which represents payment for the Member's Membership Interest. The Withdrawal Payment shall be paid within 90 days following the Termination Date and shall be in an amount equal to the greater of (a) the selling Member's Capital Account or (b) \$1.00. If the Withdrawal Payment is less than \$10,000 the entire Withdrawal Payment shall be paid in full at Closing. If the Withdrawal Payment is greater than \$10,000 the Company shall pay \$10,000 at Closing and the balance by delivery of a promissory note bearing interest at the then current short term applicable federal rate and shall be payable in 24 equal consecutive monthly installments of principal and interest commencing 60 days following the closing date.
 - 6.8. Release of Personal Guaranties. If the Terminated Member signed any personal guaranty on behalf of the Company, the Company shall use its best efforts to obtain a release of such guaranty(ies). If the Company is unable to obtain a release, the Company and the remaining Members shall indemnify the Terminated Member against any liability arising out of such guaranty.

7. DISSOLUTION AND TERMINATION

- 7.1. Dissolution of the Company. The Company may be dissolved by a Supermajority Vote of the Members.
- 7.2. Procedure on Liquidation. Upon the dissolution of the Company, the Members shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 7.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.
- 7.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:
 - a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;

- b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;
- c. Third, to Members in accordance with their positive Capital Account balances.

8. INDEMNIFICATION

- 8.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company may maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.
- 8.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 8.1.

9. DISPUTE RESOLUTION

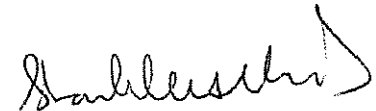
- 9.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

10. GENERAL PROVISIONS

- 10.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.
- 10.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive, Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.
- 10.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 10.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 10.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 10.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 10.7. Governing Law. This Agreement shall be governed by and construed in accordance, with the laws of the State of New York, with venue of any suit, action, or legal proceeding arising under, or relating to this Agreement being in a court of competent jurisdiction located in Oneida County, New York.
- 10.8. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.
- 10.9. Waiver of Action for Partition. In addition to being subject to Section 607 of the Act, each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 10.10. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.

- 10.11. Contract Modifications for Prospective Legal Events. In the event any state or Federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party hereto in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, the Members shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements among the Members.
- 10.12. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 10.13. Classification as Partnership. The Company intends to be classified as a partnership for Federal income tax purposes only. The Members agree to take such actions, make such elections and, if required, amend this Operating Agreement to assure that such classification is maintained.
- 10.14. Agreement Prepared by Attorney for Company. The parties each agree that the Company's counsel has prepared this Agreement in the course of its representation of the Company and not as counsel to any individual Member. The Company's counsel has advised the Company that interests of the Members may be adverse in certain circumstances. By its signature below, each Member confirms that he has either obtained the advice of separate counsel with respect to this Agreement or has independently evaluated the need for separate counsel and has knowingly elected not to retain same.

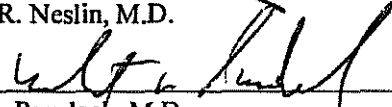
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.



Stanley P. Weiselberg, M.D.




Norman R. Neslin, M.D.



Robert R. Pavelock, M.D.

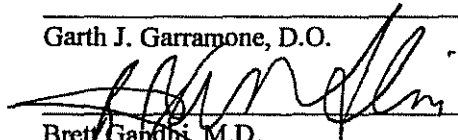


Bradley F. Sklar, M.D.



Richard Cherpak, M.D.

Garth J. Garramone, D.O.



Brett Gandhi, M.D.

EXHIBIT A

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
Stanley P. Weiselberg, M.D. [REDACTED]	[REDACTED]	100	14.29%
Norman R. Neslin, M.D. [REDACTED]	[REDACTED]	100	14.29%
Robert R. Pavelock, M.D. [REDACTED]	[REDACTED]	100	14.29%
Bradley F. Sklar, M.D. [REDACTED]	[REDACTED]	100	14.29%
Richard Cherpak, M.D. [REDACTED]	[REDACTED]	100	14.29%
Garth J. Garramone, D.O. [REDACTED]	[REDACTED]	100	14.29%
Brett Gandhi, M.D. [REDACTED]	[REDACTED]	100	14.29%

To Be Effective Upon Issuance of CON

**MOHAWK VALLEY EC, LLC
AMENDED AND RESTATED OPERATING AGREEMENT**

THIS OPERATING AGREEMENT is entered into as of November 10, 2009, to be effective on the date a CON for the Center has been issued by the Health Department, by and among STANLEY P. WEISELBERG, M.D., NORMAN R. NESLIN, M.D., ROBERT R. PAVELOCK, M.D., BRADLEY F. SKLAR, M.D., RICHARD CHERPAK, M.D., GARTH J. GARRAMONE, D.O. and BRETT GANDHI, M.D.

In consideration of the mutual promises contained herein the parties hereby agree as follows:

RECITALS:

A. The Members have entered into an Operating Agreement dated as of November 10, 2009 (the "Original Operating Agreement").

B. In connection with the issuance of a Certificate of Need with respect to the Center, the Members now wish to amend and restate the Original Operating Agreement.

NOW, THEREFORE, the Members agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. "Act" shall mean the New York Limited Liability Company Law, as the same may be amended from time to time.
- 1.2. "Additional Funding Requirement" shall mean additional funds called pursuant to Section 4.2 hereof.
- 1.3. "Agreement" shall mean this Operating Agreement as amended from time to time.
- 1.4. "Articles of Organization" shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time.
- 1.5. "Capital Account" shall mean the individual accounts established and maintained pursuant to Section 4.5 hereof.
- 1.6. "Capital Contribution" shall mean any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services which a Member contributes to the Company.
- 1.7. "Center" shall mean the ambulatory surgery center to be owned and operated by the Company and located at 116 Business Park Drive, Utica, New York 13502.
- 1.8. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.

- 1.9. "Company" shall mean Mohawk Valley EC, LLC, a New York limited liability company and its successors.
- 1.10. "CON" shall mean a certificate of need issued by the New York State Department of Health's Public Health Council with respect to the Center.
- 1.11. "DDM" shall mean Digestive Disease Medicine of Central New York, LLP and its successors.
- 1.12. "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company.
- 1.13. "Health Department" shall mean the New York State Department of Health.
- 1.14. "Initial Capital Contributions" shall mean the Capital Contributions to be made by the Members upon issuance of the CON as provided in Section 4.1.
- 1.15. "Majority Vote of the Members" shall mean the affirmative vote of a majority of all Members.
- 1.16. "Member" shall mean Stanley P. Weiselberg, M.D., Norman R. Neslin, M.D., Robert R. Pavelock, M.D., Bradley F. Sklar, M.D., Richard Cherpak, M.D., Garth J. Garramone, D.O., Brett Gandhi, M.D. and such other Persons who are admitted to the Company as additional or substitute Members.
- 1.17. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and any right to vote or participate in management of the Company.
- 1.18. "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined at the close of each fiscal year on the Company's information tax return filed for Federal income tax purposes.
- 1.19. "Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.20. "Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.
- 1.21. "Partner Minimum Gain" shall mean an amount with respect to each Partner Nonrecourse Debt equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debtor were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.
- 1.22. "Partner Nonrecourse Debt" shall have the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.

- 1.23. "Partnership Minimum Gain" shall have the meaning set forth in Section 1.704-2(b)(2) and (d) of the Treasury Regulations.
- 1.24. "Person" shall mean an individual, corporation, partnership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.25. "PHC" shall mean the New York State Department of Health's Public Health Council.
- 1.26. "Sharing Ratio" shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members, or such other ratio as shall be agreed by all Members from time to time.
- 1.27. "Supermajority Vote of the Members" shall mean the affirmative vote of a number of Members equal to the total number of Members minus two.
- 1.28. "Transfer" shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or a part of a Member's Membership Interest.
- 1.29. "Treasury Regulation" shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.30. "Unit" shall mean a Unit of Membership Interest issued under this Agreement. A Unit is divisible into fractional parts. The allocation of Net Profits and Net Losses shall be made pursuant to the applicable provisions of this Agreement based on the number of Units held by Members.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State and shall continue until such time as it shall be terminated under the provisions of Section 7.1 hereof.
- 2.2. Name. The name of the Company shall be "Mohawk Valley EC, LLC" with such variations as may be necessary to comply with statutory requirements.
- 2.3. Purpose. The Company has been formed to own and operate a single-specialty ambulatory surgery center specializing in endoscopic procedures to be located at 116 Business Park Drive, Utica, New York.
- 2.4. Effective Date of Agreement. This Amended and Restated Operating Agreement shall be effective as of the date that a certificate of need has been issued for the Center (the "Effective Date").
- 2.5. Superseding Effect. This Amended and Restated Operating Agreement shall amend, restate and supersede the Original Operating Agreement in its entirety.

3. MEMBERS; CONTROL AND MANAGEMENT

- 3.1. Membership Interest. The number of Units of Membership Interest owned by each Member and their respective Sharing Ratios is set forth on Exhibit A attached hereto.
- 3.2. Membership Qualifications. Members shall (a) be partners or employees of DDM; (b) be New York-licensed physicians who practice in the specialty of gastroenterology; (ii) maintain privileges at the Center once procedures for privileges are established; and (iii) perform services at the Center if he refers patients to the Center. In addition to any other conditions to membership set forth in this Agreement no Person may own 10% or more of any Membership Interest or voting rights in the Company unless approved by the PHC.
- 3.3. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts or liabilities of the Company.
- 3.4. Management of the Company. The business and affairs of the Company shall be managed by the Members. This Section may not be deleted, modified or amended without the prior approval of the Health Department.
- 3.5. Action by Members
 - a. For voting purposes each Member shall have one vote.
 - b. The following actions shall require a Supermajority Vote of the Members: (i) adopt, amend, restate or revoke the Articles of Organization or this Agreement; (ii) approve the dissolution of the Company; (iii) approve the sale, exchange or lease of all or substantially all of the Company's assets; (iv) make a call for Additional Funds under Section 4.2 or require the delivery of personal guaranties under Section 4.4; (v) borrow money or incur expenses in excess of \$50,000; (vi) approve a merger or consolidation of the Company with any other entity; (vii) withdraw the Company's CON application; or (viii) admit a new Member.
 - c. Except as provided in subsection (b) above or as otherwise required under this Agreement, all other decisions of the Company shall require a Majority Vote of the Members.
 - d. No act of a Member shall bind the Company unless such act has been authorized by a sufficient vote of Members as set forth in this Section.
- 3.6. Action by Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by Members whose voting power is sufficient to authorize such action.
- 3.7. No Exclusive Duty. The Members may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Members or to the income or proceeds derived therefrom. No

Member shall incur any liability to the Company or to any of the other Members as a result of engaging in any other business or venture.

- 3.8. Transactions with the Company. A Member may be compensated for services provided to the Company. Members are also expressly permitted to make loans to the Company and charge a market interest rate on such loans.
- 3.9. Medical Staff. Members will not be entitled to membership on the Center's medical staff or to exercise clinical privileges at the Center merely by virtue of the fact that he is a Member of the Company. Further, membership on the Center's Medical Staff and the exercise of clinical privileges will not be limited solely to Members.

4. CAPITAL CONTRIBUTIONS

- 4.1. Initial Capital Contributions. Following the issuance of the CON each Member shall make an Initial Capital Contribution up to the aggregate amount set forth on Exhibit A at times and in increments as directed by a Majority Vote of the Members in order to fund the Members' share of the equity and working capital requirements associated with the development and operation of the Center.
- 4.2. Additional Funding Requirement. If the Members by a Supermajority Vote of the Members determine that the Company requires funds in excess of the Initial Capital Contributions, such funds shall be contributed by the Members in proportion to their Sharing Ratios within 10 days following the date of the call ("Additional Funds"). At the direction of the Members such Additional Funds shall either be in the form of a loan or Capital Contribution to the Company. For purposes of this Agreement, Additional Funds called for under this Section shall be referred to as the "Additional Funding Requirement."
- 4.3. Remedies for Failure to Fund. If any Member shall fail to pay his Initial Capital Contribution or Additional Funding Requirement when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 30 days in which to cure such default. If, after 30 days, the Defaulting Member has not cured such default, then upon a Majority Vote of the Members (excluding the Defaulting Member), the Company may (a) exercise its Right of Termination under Section 6.4; (b) apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) enforce the Defaulting Member's obligation to pay his Initial Capital Contribution or Additional Funding Requirement and recover attorneys' fees and costs of collection in addition to interest at 15% per annum accruing from the date the Capital Contribution or Additional Funding Requirement was first required to have been paid.
- 4.4. Personal Guaranties.
 - a. In order to obtain bank loans or other third party financing for the Company, or to secure other Company obligations, each Member shall execute and deliver one or more personal guaranties in such amounts, at such times and in such form as directed by a Supermajority Vote of the Members (a "Member Guaranty"). If any Member shall fail to deliver his Member Guaranty within 10 days following request the Member shall be in default and the

Company may (a) exercise its Right of Termination under Section 6.4 or (b) enforce the Member's obligation to deliver his Member Guaranty and recover attorneys' fees in connection with any enforcement action.

b. In the event one or more Members who have delivered a Member Guaranty pays in excess of his share of the liability (based on the Member's Sharing Ratio) under the guaranty (an "Excess Funding Member"), such Member shall have the right to seek payment of such excess from those Members who also delivered a Member Guaranty, but did not pay their full share of the liability or a Member who did not deliver a Member Guaranty (a "Nonpaying Member"). Any amount not paid by a Nonpaying Member within two business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from a Nonpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection. A Member who is not required to deliver a personal guaranty shall not be considered a Nonpaying Member hereunder.

4.5. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.

4.6. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.

4.7. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in its Capital Account.

4.8. Treatment of Issuance of Membership Interests. Upon a Supermajority Vote of the Members, the issuance of a Membership Interest to a new Member in exchange for cash paid to the Company shall be deemed to be a sale of a proportionate part of each existing Member's Membership Interest to the new Member and such cash shall be distributed to the existing Members in accordance with their respective Sharing Ratios.

5. ALLOCATIONS AND DISTRIBUTIONS

5.1. Allocation of Net Profits and Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.

5.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance

with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.

- 5.3. **Distributions.** Net available cash flow of the Company shall be distributed to the Members at such times and in such amounts as the Members shall determine.
- 5.4. **Changes in Sharing Ratios.** If there are changes in the Members' Sharing Ratios during a fiscal year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 5.5. **Minimum Gain Chargeback.** If there is a net decrease in Partnership Minimum Gain during any fiscal year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(f) of the Treasury Regulations as is necessary to meet the requirements for a minimum gain chargeback as provided in that Treasury Regulation.
- 5.6. **Partner Minimum Gain Chargeback.** If there is a net decrease in Partner Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, any Member who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 5.7. **Nonrecourse Deductions.** Nonrecourse Deductions for any fiscal year shall be allocated among the Members in proportion to their Sharing Ratios.
- 5.8. **Partner Nonrecourse Deductions.** Any Partner Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.
- 5.9. **Qualified Income Offset.** If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Partnership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.
- 5.10. **Compliance with Regulations.** The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may make any modifications to the manner in which the Capital Accounts are maintained that the Members determine is appropriate in order to comply with such

Treasury Regulations.

- 5.11. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.
- 5.12. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 5.13. Fiscal Year. The Company's fiscal year shall be the calendar year.
- 5.14. Records, Audits, and Reports. The Company shall maintain records and accounts of all operations and expenditures of the Company.
- 5.15. Returns and Other Elections. The Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. All elections permitted to be made by the Company under federal or state laws shall be made by the Members.

6. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 6.1. Covenant Against Withdrawal. No Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 6.2. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of the Member's Membership Interest, or any interest therein, unless (a) the Transfer is to the Company or to a Person approved by a Supermajority Vote of the Members; (b) the proposed transferee satisfies all membership criteria; and (c) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. Each Member hereby agrees to indemnify and hold the Company and the other Members harmless from and against any and all claims, liabilities, costs and expenses including, without limitation, reasonable attorneys' fees, suffered as a result of such Member's attempting to effect a Transfer in violation of this Section. The following shall be satisfied as conditions to any such Transfer:
 - a. All transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law.
 - b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
 - c. The transferee shall have adopted and approved in writing this Agreement.
 - d. The transferee shall have agreed to bear all costs incurred by the Company in connection with his or her admission as a substitute Member.

- e. Except for the right to receive allocations of Net Profits and Net Losses and to receive distributions, a transferee of a Membership Interest shall not have a right to become a Member unless approved by a Supermajority Vote of the Members.
- 6.3. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.
- 6.4. Termination of Membership: Involuntary Withdrawal. The Company shall have the right, which may be exercised at the Company's sole discretion, to terminate the membership of a Member under the circumstances described below (the "Right of Termination"). A termination of a Member's membership under this Section shall be considered an involuntary withdrawal from the Company by such Member. If the Company elects to exercise its Right of Termination, the Company shall provide written notice of such election to the affected Member (the "Terminated Member"), which notice shall set forth the date on which the membership has terminated or will terminate (the "Termination Date"). Effective on the Termination Date, without any further action required by the Terminated Member or the Company (a) the Terminated Member shall cease being a Member of the Company and shall have no further rights under this Agreement except the right to receive a Withdrawal Payment as provided in Section 6.5 hereof and (b) the Terminated Member's Membership Interest, and all rights therein, shall automatically transfer to the Company. A Majority Vote of the Members shall be required to cause the Company to exercise its Right of Termination under this Section.
- a. Right to Terminate if Member Ceases to be an DDM Partner or Employee. If a Member ceases to be a partner or employee of DDM the Company shall have a continuing right to exercise its Right of Termination with respect to such Member. The Termination Date shall be the date the Member's partnership or employment with DDM terminated or the date he ceased to be a DDM partner or employee, unless a later date is set by the Company. If a Member elects to voluntarily withdraw as a partner of DDM, the Company may exercise its Right of Termination at any time on or after the date on which such Member first notified DDM of his intent to withdraw.
- b. Right to Terminate on Other Events. The Company shall have a continuing right to exercise its Right of Termination with respect to any Member who (i) has been adjudicated a bankrupt, voluntary or involuntary; (ii) has made an assignment for the benefit of creditors; (iii) has applied for a judicial dissolution of the Company under the Act; (iv) is ineligible to own an interest in an Article 28 ambulatory surgery facility; or (v) defaults under this Agreement, which default is not cured within 30 days following written notice.
- 6.5. Withdrawal Payment to Terminated Member. A Member whose membership has been terminated under Section 6.4 shall be entitled to receive a Withdrawal Payment which represents payment for the Member's Membership Interest. The Withdrawal Payment shall be paid within 90 days

following the Termination Date (the "Payment Date"). The Withdrawal Payment shall be calculated pursuant to Section 6.6 and paid pursuant to Section 6.7.

- 6.6. Amount of Withdrawal Payment. The Withdrawal Payment shall be determined by multiplying the Company's Adjusted Book Value by the Terminated Member's Sharing Ratio. As used herein, "Adjusted Book Value" is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date of the Termination Date. Adjusted Book Value shall be determined by the Company's regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), adjusted as follows:
- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
 - b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
 - c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
 - d. The Company shall include as an asset 95% of the value of its accounts receivable calculated by the Company's regular accountant using the Company's historic collection percentage determined over the prior 24 month period;
 - e. If the Terminated Member had been a Member of the Company for at least four years following the date the Center began commercial operations, the Company shall also include as an asset a goodwill component (the "Goodwill Component") in an amount equal to one times (1x) the average of the Company's annual net operating income (in accordance with generally accepted accounting principles), excluding extraordinary gains and losses, calculated before deduction of interest, taxes, depreciation and amortization for the most recent two fully completed prior calendar years; and
 - f. If the Company has exercised its Termination Right for any of the reasons set forth in Section 6.4(b)(iii), (iv) or (v), the Withdrawal Payment (i) shall not include the Goodwill Component and (ii) shall be reduced by 30%.
- 6.7. Payment of Withdrawal Payment. The Company shall pay (a) 20% of the Withdrawal Payment by business check on the Payment Date and (b) the balance by execution and delivery of a promissory note which (x) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the first payment is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 60 equal consecutive monthly installments of principal and interest commencing 90 days following the Payment Date. The promissory note shall be unsecured and shall provide that in case of default all principal and

accrued interest shall become immediately due and payable at the holder's election. The Company shall have the right to setoff any amounts owing by the Terminated Member to the Company against the Withdrawal Payment. Notwithstanding the terms of the promissory note, the Company, by a Supermajority Vote of the Members, may defer all or a part of the payments due thereunder if such payments, combined with Withdrawal Payments owing by the Company to other Terminated Members, exceed 25% of the Company's net cash flow available for distribution on an annual basis. All deferred payments shall accrue interest at 10% per annum and shall be paid in full not later than two years following the original maturity date of the promissory note.

- 6.8. Release of Personal Guaranties. If the Terminated Member signed any personal guaranty on behalf of the Company, the Company shall use its best efforts to obtain a release of such guaranty(ies). If the Company is unable to obtain a release, the Company and the remaining Members shall indemnify the Terminated Member against any liability arising out of such guaranty.

7. DISSOLUTION AND TERMINATION

- 7.1. Dissolution of the Company. The Company may be dissolved by a Supermajority Vote of the Members.
- 7.2. Procedure on Liquidation. Upon the dissolution of the Company, the Members shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 7.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.
- 7.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:
- a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
 - b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;
 - c. Third, to Members in accordance with their positive Capital Account balances.

8. INDEMNIFICATION

- 8.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnatee") (a) who is or was a Member or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, partner, agent or employee of another limited liability company, corporation, partnership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or

future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Member, director, officer, trustee, partner, agent or employee, or arising out of his status as a manager, director, officer, trustee, partner, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company may maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees, whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

- 8.2. Advances: Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 8.1.

9. DISPUTE RESOLUTION

- 9.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

10. GENERAL PROVISIONS

- 10.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.
- 10.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally-recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be 110 Business Park Drive,


Utica, New York 13502 and (b) each Member's address shall be that set forth on the Company's records.

- 10.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 10.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.
- 10.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.
- 10.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.
- 10.7. Governing Law. This Agreement shall be governed by and construed in accordance, with the laws of the State of New York, with venue of any suit, action, or legal proceeding arising under, or relating to this Agreement being in a court of competent jurisdiction located in Oneida County, New York.
- 10.8. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.
- 10.9. Waiver of Action for Partition. In addition to being subject to Section 607 of the Act, each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 10.10. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.
- 10.11. Contract Modifications for Prospective Legal Events. In the event any state or Federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party hereto in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, the Members shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements among the Members.
- 10.12. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.

- 10.13. Classification as Partnership. The Company intends to be classified as a partnership for Federal income tax purposes only. The Members agree to take such actions, make such elections and, if required, amend this Operating Agreement to assure that such classification is maintained.
- 10.14. Agreement Prepared by Attorney for Company. The parties each agree that the Company's counsel has prepared this Agreement in the course of its representation of the Company and not as counsel to any individual Member. The Company's counsel has advised the Company that interests of the Members may be adverse in certain circumstances. By its signature below, each Member confirms that he has either obtained the advice of separate counsel with respect to this Agreement or has independently evaluated the need for separate counsel and has knowingly elected not to retain same.

[Signatures on following page]

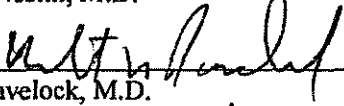
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.



Stanley P. Weiselberg, M.D.



Norman R. Neslin, M.D.



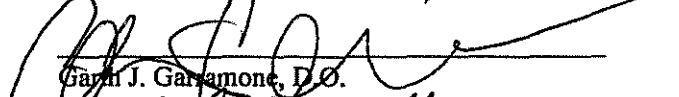
Robert R. Pavelock, M.D.



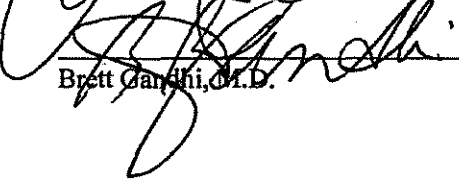
Bradley Sklar, M.D.



Richard Cherpak, M.D.



Gary J. Garamone, D.O.



Brett Gandhi, M.D.

EXHIBIT A

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
Stanley P. Weiselberg, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Norman R. Neslin, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Robert R. Pavelock, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Bradley F. Sklar, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Richard Cherpak, M.D. [REDACTED]	[REDACTED]	100	14.2857%
Garth J. Garramone, D.O. [REDACTED]	[REDACTED]	100	14.2857%
Brett Gandhi, M.D. [REDACTED]	[REDACTED]	100	14.2857%



233 Genesee Street, Utica, NY 13501
CNY Business & Professional Banking
November 9, 2009

Mr. Ted Kondzielawa , CFO
Mohawk Valley EC, LLC
110 Business Park Drive
Utica, New York 13502

Dear Mr. Kondzielawa:

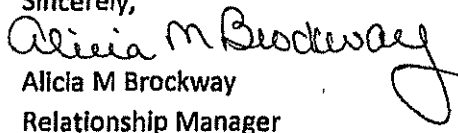
Please be advised that Manufacturers and Traders Trust Company ("M&T Bank") would like to express its interest in providing equipment and working capital financing for the new Ambulatory Surgery Center to be developed by Mohawk Valley EC, LLC to be located at 116 Business Park Drive Utica, New York. This letter is an outline of basic terms and conditions and should not be considered a commitment. Any commitment is subject to M&T Bank's credit approval process.

Based upon our initial review of the proposed equipment purchases for the project, M&T Bank would consider lending up to \$1,080,000 to the borrower at a fixed or variable rate for a term of up to seven years. The equipment loan would be secured by the equipment being purchased and a general security interest in all business assets of the borrower. A minimum of 10% equity into the equipment purchase would be required. In addition, M&T Bank would consider a working capital line of credit up to \$259,500 to the borrower at a variable rate that would also be secured by a general security interest in all assets of the borrower. M&T Bank may require guarantees and will be determined as part of the formal underwriting process.

Based on the current rate environment, we would expect the fixed rates to range between 5.75% and 6.75% and variable rates to range from 3.75% and 4.75%, however, these move up and down based upon the current rate environment.

We appreciate the opportunity to work with you and look forward to supporting this project. If you have any questions, please do not hesitate to contact me at 738-4834.

Sincerely,


Alicia M Brockway
Relationship Manager



233 Genesee Street, Utica, NY 13501
CNY Business & Professional Banking

November 9, 2009

Mr. Ted Kondzielawa , CFO
116 Business Park Associates, LLC
110 Business Park Drive
Utica, New York 13502

Dear Mr. Kondzielawa:

Please be advised that Manufacturers and Traders Trust Company ("M&T Bank") would like to express its interest in providing construction and permanent financing for the new Ambulatory Surgery Center to be developed by 116 Business Park Associates, LLC to be located at 116 Business Park Drive Utica, New York. This letter is an outline of basic terms and conditions and should not be considered a commitment. Any commitment is subject to M&T Bank's credit approval process.

Based upon our initial review of the proposed project, M&T Bank would consider lending approximately \$3,681,000 to the borrower at a fixed or variable rate for a term of five years and based on an amortization of up to 15 years. A loan to value of no greater than ninety percent would be required. The loan would be secured by a mortgage on the real estate as well as a general security interest in all assets of the borrower. M&T Bank may require guarantees and will be determined as part of the formal underwriting process.

Based on the current rate environment, we would expect the fixed rates to range between 5.75% and 6.75% and variable rates to range from 3.75% and 4.75%, however, these move up and down based upon the current rate environment.

We appreciate the opportunity to work with you and look forward to supporting this project. If you have any questions, please do not hesitate to contact me at 738-4834.

Sincerely,

A handwritten signature in cursive script that reads 'Alicia M Brockway'.

Alicia M Brockway
Relationship Manager

Mohawk Valley EC, LLC

Pro-Forma Balance Sheet

	<u>Beginning of Year One July 2010</u>
ASSETS	
CURRENT ASSETS	
Cash Balances	\$ 253,203
Accounts Receivable - Net	\$ -
TOTAL CURRENT ASSETS	\$ 253,203
OTHER ASSETS	
Equipment (net of depreciation)	\$ 1,589,992
TOTAL OTHER ASSETS	\$ 1,589,992
TOTAL ASSETS	\$ 1,843,195
 LIABILITIES AND NET ASSETS	
CURRENT LIABILITIES	
TOTAL CURRENT LIABILITIES	\$ -
LONG-TERM LIABILITIES	
Bank Loan for Equipment	\$ 1,476,861
TOTAL LONG-TERM LIABILITIES	\$ 1,476,861
TOTAL LIABILITIES	\$ 1,476,861
LLC CAPITAL	\$ 366,333
TOTAL LIABILITIES AND LLC CAPITAL	\$ 1,843,195

November 4, 2009

Ted Kondzielawa
Digestive Disease Medicine of Central New York, LLP
110 Business Park Drive
Utica, New York 13502

Re: Lease between 116 Business Park Associates, LLC and Mohawk Valley EC,
LLC

Dear Mr. Kondzielawa:

I am a licensed real estate broker with substantial experience in the rental of medical facilities and, therefore, I have familiarity with the rental rates for medical space, including ambulatory surgical space, in the Utica area.

You have provided me a draft of a Lease between 116 Business Park Associates, LLC ("Landlord") and Mohawk Valley EC, LLC ("Tenant") under which Landlord will lease to Tenant approximately 11,436 square feet located at 116 Business Park Drive, Utica, New York to be used by Tenant as an ambulatory surgery center. Pursuant to the Lease Landlord will pay all costs of building-out the surgery center which is estimated to be around \$2,300,000.

Tenant will pay base rent in the amount of \$42.50 per square foot plus utilities. Real estate taxes and operating expenses are included in the base rent subject to escalation, if any, over the base year based on the percentage of the building occupied by Tenant. The term of the Lease is 10 years and Tenant has the right to extend the Lease for two additional five-year terms. The base rent remains constant over the initial 10 year term and increases if the Lease is extended. Tenant is not obligated to pay rent until the date that the surgery center improvements have been completed and Tenant is ready to begin business operations.

Based on the foregoing, it is my opinion that the rent payable by the Tenant under the Lease is within customary and reasonable rates for comparable medical real estate in this area.

Very truly yours,



Anthony D. Hathaway
Managing Director



Pyramid Brokerage Company

COMMERCIAL REAL ESTATE SOLUTIONS

November 12, 2009

Mr. Ted Kondzlelawa
Digestive Disease Medicine of Central New York, LLP
110 Business Park Drive
Utica, New York 13502

Syracuse Office
PO Box 3
5786 Widewaters Parkway
Syracuse, NY 13214
(315) 445-1030 • Fax: (315) 445-2074

Re: Lease between 116 Business Park Associates, LLC and Mohawk Valley EC, LLC

Dear Mr. Kondzlelawa-

I am a New York State licensed real estate broker with substantial experience in the rental of medical facilities and, therefore, I have familiarity with the market comparable rental rates for medical space including, but not limited to ambulatory surgical space in the Utica, New York market area.

You have provided me a Draft Lease between 116 Business Park Associates, LLC ("Landlord") and Mohawk Valley EC, LLC ("Tenant") under which Landlord will lease to Tenant approximately 11,436 square feet located at 116 Business Park Drive, Utica, New York; to be used by Tenant as an ambulatory surgery center. Pursuant to the Lease, the Landlord will pay all Tenant Improvement or the costs of building-out the surgery center estimated to be around \$2,300,000.

The Tenant will pay base rent in the amount of \$42.50 per square foot plus utilities. Real estate taxes and operating expenses are included in the base rent subject to escalation, if any, over the base year based on the percentage of the building occupied by Tenant. The term of the Lease is 10 years and Tenant has the right to extend the Lease for two (2) additional five (5) year terms. The base rent remains constant over the primary ten (10) year Lease Term and increases if the Lease is extended beyond the primary Lease Term. The Tenant is not obligated to pay rent until the date that the surgery center improvements have been completed and Tenant is ready to begin business operations.

Based on the foregoing, it is my opinion that the rent payable by the Tenant under the Lease is within customary and reasonable rates for comparable medical real estate in this area.

Sincerely,

Michael Kalet
Director of Sales / Broker Associate
Pyramid Brokerage Company, Inc.
A Cushman & Wakefield Alliance Member
(315)445-8534
mikekalet@pyramidbrokerage.com

Email transmission only
MK/kv



ALBANY • BINGHAMTON • BUFFALO • CORNING • ITHACA
ROCHESTER • SYRACUSE • UTICA • WATERTOWN
pyramidbrokerage.com

Individual member of



Received Time: Nov. 12, 2009 4:43PM No. 0025

TOTAL P.02

MOHAWK VALLEY EC, L.L.C.

SOURCES OF CASH

Each of the seven members of the proposed LLC will contribute equal funds to support the development and operation of the ambulatory surgery center. The total amount provided by each will be [REDACTED] for the project cost [REDACTED] and working capital [REDACTED]. Each member has adequate cash on hand in either bank or investment accounts to support the equity contribution required.

Curriculum Vitae

Dr. Garth J. Garramone

CURRENT STATUS:

Currently Partner/Owner: Digestive Disease Medicine of Central New York, Utica, NY.
Licensed to practice medicine in the state of New York.
Board certified in Internal Medicine; August of 2000.
Board certified in Gastroenterology; November 2003.

FELLOWSHIP TRAINING:

2000-2003: Fellowship in Gastroenterology at Nassau University Medical Center, East Meadow, NY; major affiliate of SUNY Stony Brook Medical School and Lenox Hill Hospital.

RESIDENCY TRAINING:

1998-2000: Residency in Internal Medicine; University of Massachusetts/Memorial Hospital, Worcester, MA.

1997-1998: Medical Internship; University of Massachusetts/Memorial Hospital, Worcester, MA.

EDUCATIONAL BACKGROUND:

1993-1997: University of New England College of Osteopathic Medicine, Biddeford, ME.: *D.O. Degree.*

1992-1993: William M. Scholl College of Podiatric Medicine, Chicago, IL.

1990-1992: Utica College of Syracuse University, Utica, NY. BS in Human Studies/Economics.

1988-1990: Hamilton College, Clinton, NY.

RESEARCH/PUBLICATIONS:

Papers

Endoscopic Ultrasound Findings in Esophageal Intramural Pseudodiverticulosis. Garth J. Garramone, D.O., David I. Weltman, M.D., Marcio Curvelo, M.D., Carylann Hadjiyane, M.D., Crescens Pellecchia, M.D., Ali Karakurum, M.D., Nassau University Medical Center, East Meadow, NY. *Paper Accepted to Gastrointestinal Endoscopy January 2003.*

Poster Presentations

Gastrointestinal Histoplasmosis Involving the Stomach and Colon defining a patient with AIDS.

Garth J. Garramone, DO, Daniel Freese, DO, Carylann Hadjiyane, MD, Crescens Pellecchia, MD, Ali Karakurum, MD. Nassau University Medical Center, East Meadow, NY. *Presented at The American College of Gastroenterology 67th Annual Scientific meeting, October 2002. Seattle, Washington.*

Superior Mesenteric Artery Vasculitis as a cause of abdominal pain in a patient with Systemic Lupus Erythematosus.

Garth J. Garramone, DO, Omer Masood, MD, Crescens Pellecchia, MD. Nassau University Medical Center, East Meadow, NY. *Presented at The American College of Gastroenterology 66th Annual Scientific Meeting, October 2001. Las Vegas, Nevada.*

Curriculum vitae pg. 2.
Garth J. Garramone, DO

Poster Presentations--continued

Toxic methemoglobinemia induced by topical benzocaine spray application during endoscopy.

Ali S. Karakurum, MD, Caryllann Hadjiyane, MD, Garth J. Garramone, DO, Imran Zaffer, MD, Crescens Pellecchia, MD.
Nassau University Medical Center, East Meadow, NY. Presented at The American College of Gastroenterology 66th Annual Scientific Meeting, October 2001. Las Vegas, Nevada.

Subhepatic Abscess from a spilled gallstone 2.5 years after laparoscopic cholecystectomy.

Garth J. Garramone, DO, Christopher Elyad, MD, Caryllann Hadjiyane, MD, Crescens Pellecchia, MD, Ali Karakurum, MD.
Nassau University Medical Center, East Meadow, NY. Presented at The American College of Physicians New York Downstate Scientific Meeting, March 16th, 2002. New York, NY.

Abstracts Published

Endoscopic Ultrasound of Esophageal Intramural Pseudodiverticulosis.

Garth J. Garramone, DO, Chand Mathur, MD, David I. Weltman, MD, Caryllann Hadjiyane, MD
Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology, September 2001, vol. 96. s14.

Hepatic Hydrothorax confirmed by technetium scan before TIPS placement in a cirrhotic patient.

A. Shehata, MD, Garth J. Garramone, DO, Caryllann Hadjiyane, MD, Ali S. Karakurum, MD, Crescens Pellecchia, MD,
Published in The American Journal of Gastroenterology, September 2001, vol. 96. s258.

Superior Mesenteric Artery vasculitis as a cause of abdominal pain in a patient with Systemic Lupus Erythematosus.

Garth J. Garramone, DO, Omer Masood, MD, Crescens Pellecchia, MD. Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology, September 2001, vol. 96. s200.

Subhepatic abscess from a spilled gallstone 2.5 years after laparoscopic cholecystectomy.

Garth J. Garramone, DO, Caryllann Hadjiyane, MD, Ahmed Shehata, MD, Crescens Pellecchia, MD.
Nassau University Medical Center, East Meadow, NY. Published in The American Journal of Gastroenterology September 2001, vol.96, s121.

Toxic methemoglobinemia induced by topical benzocaine application during endoscopy.

Ali S. Karakurum, MD, Caryllann Hadjiyane, MD, Garth J. Garramone, MD, Imran Zaffer, MD, Crescens Pellecchia, MD
Published in The American Journal of Gastroenterology, September 2001, vol. 96, s257.

Awards

2003 FELLOW OF THE YEAR; Nassau University Medical Center, East meadow, LI, NY

ORGANIZATIONS AND COMMITTEES

American College of Gastroenterology

American Gastroenterology Association

Medical Society of Central New York

American College of Physicians

Credentials Committee Faxton-St. Lukes Healthcare 2008

Dysphagia Guidelines Committee Faxton-St. Lukes Healthcare 2005

TEACHING

Lecturer: Critical Care Conference of Central New York; Gastrointestinal Emergencies 2005-2008

Active in teaching Medical Students and Family Practice Residents on their GI rotations with me. Students from UNECOM and St. Elizabeth Family Practice Program.

Guest Lecturer in Central New York Colon Cancer Awareness Program 2009

COMMUNITY/INTERESTS

Sponsor for Upstate Cerebral Palsy

Sponsor/Donations to the House of the Good Sheppard

Sponsor Mohawk Valley Blues Society 2007

Operation Sunshine for under privileged children



CONTINUING MEDICAL EDUCATION

Currently enrolled in the ABIM continuing medical education and board recertification program. 120 CME credits.

2009: Practical Reviews in Gastroenterology. 30 CME credits.

2008: ACG Annual PostGraduate course and Meeting. Orlando, FL. 16 CME credits.

2007: ACG Annual Post Graduate course and Meeting, Philadelphia, PA. 16 CME credits.

2002: ACG Annual PostGraduate course and Board Review. Seattle, WA. 16 CME credits.

2001: ACG Annual PostGraduate course and Board Review. Las Vegas, NV. 16 CME credits.

2007: MKSAP 13-90 CME credits.

2008: Mayo Clinic Gastroenterology and Hepatology Board Review. 29.5 CME credits.

2007: ACG update and recertification course. 4 CME credits.

2005-2008: Practical Reviews in Gastroenterology/CME only. 57 CME credits.

2005: MLMIC Risk Management Course. 6 CME credits.

2005-2007: UpToDate. 24.25 CME credits.

2001: Update in Gastroenterology, Hepatology and Nutrition. 18th Annual Course, Columbia Presbyterian Hospital. 16 CME credits.

2002: Recent Advances in HCV therapy: A Specialists Perspective. Garden City, NY. 6 CME credits.

2002: William Steinberg Board Review Course in Gastroenterology. Arlington, Virginia. 29 CME credits.

2002: New York Society for Gastrointestinal Endoscopy Hands-On Course in Endoscopy. New York, New York. 6 CME credits.

2003: Endoscopic Workshop in Therapeutic and Diagnostic ERCP. New York, New York. 6 CME credits.

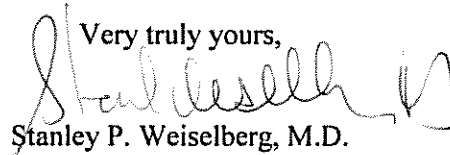
November 10, 2009

Mohawk Valley EC, LLC

Gentlemen:

This letter will confirm that I plan to perform approximately 375 upper endoscopy type procedures and 500 colonoscopy type procedures at the ambulatory surgery center to be developed by you and located at 116 Business Park Drive, Utica, New York.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Stanley P. Weiselberg, M.D.", written in black ink.

Stanley P. Weiselberg, M.D.

Mohawk Valley EC, LLC

Gentlemen:

This letter will confirm that I plan to perform approximately 350 upper endoscopy type procedures and 500 colonoscopy type procedures at the ambulatory surgery center to be developed by you and located at 116 Business Park Drive, Utica, New York.

Very truly yours,

A handwritten signature in black ink, appearing to read "Norman R. Neslin". The signature is fluid and cursive, with a prominent initial "N" and "R".

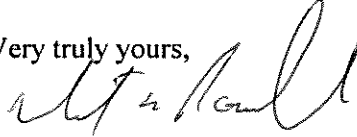
Norman R. Neslin, M.D.

Mohawk Valley EC, LLC

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Very truly yours,

A handwritten signature in cursive script, appearing to read "R. Pavelock".

Robert R. Pavelock, M.D.

Mohawk Valley EC, LLC

Gentlemen:

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Very truly yours,


Bradley F. Sklar, M.D.

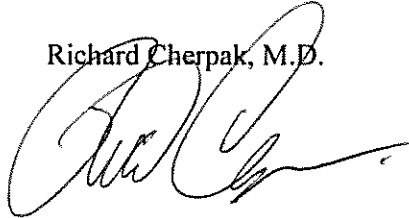
Mohawk Valley EC, LLC

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Very truly yours,

Richard Cherpak, M.D.

A handwritten signature in black ink, appearing to read 'Richard Cherpak', with a long horizontal flourish extending to the right.

Mohawk Valley EC, LLC

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Very truly yours,

A handwritten signature in black ink, appearing to read "B. Gandhi", written over a horizontal line.

Brett Gandhi, M.D.

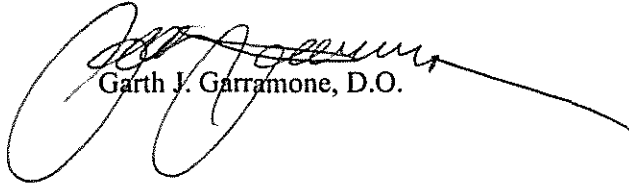
November 10, 2009

Mohawk Valley EC, LLC

Gentlemen:

This letter will confirm that I plan to perform approximately 375 upper endoscopy type procedures and 500 colonoscopy type procedures at the ambulatory surgery center to be developed by you and located at 116 Business Park Drive, Utica, New York.

Very truly yours,



Garth J. Garramone, D.O.

Interest, Rent and Depreciation Expense

Interest

Mohawk Valley EC plans to obtain a bank loan for the purchase of equipment for the new surgery center. The bank loan will be a seven-year loan for \$1,476,861 at an interest rate of eight percent. Interest by year is as follows:

Year 1	\$112,222.05
Year 2	\$ 98,609.96
Year 3	\$ 83,868.08
Year 4	\$ 67,902.62
Year 5	\$ 50,612.04
Year 6	\$ 31,886.35
Year 7	\$ 11,606.44

Rent

Mohawk Valley EC has signed a lease for space at 110 Business Park Drive, Utica, New York 13502 that has the following rent expense by year:

Years 1 through 10:	\$480,312
Optional renewal for Years 11 through 15:	\$528,343
Optional renewal for Years 16 through 20:	\$554,760

Depreciation

Mohawk Valley EC will acquire equipment and furnishings at project inception that will be depreciated on a straight-line basis over seven years.

	<u>Expense</u>	<u>Depreciation Period</u>	<u>Annual Depreciation</u>
Moveable Equipment	\$1,589,992	7	\$ 227,142

MOHAWK VALLEY EC, LLC
Monthly Revenues, Expenditures and Cash Flow for Year 1

	Month of Operation												YEAR 1 TOTAL	
	1	2	3	4	5	6	7	8	9	10	11	12		
TOTAL PATIENT REVENUE	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 3,453,690
EXPENSE														
1. Salaries & Wages	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 78,167	\$ 938,000
2. Employee Benefits	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 15,633	\$ 187,600
3. Professional Fees	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 2,792	\$ 33,500
4. Medical & Surgical Supplies	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 27,315	\$ 327,780
5. Non-medical & Non-surgical Supplies	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 12,000
6. Utilities	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 4,833	\$ 58,000
7. Purchased Services	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 24,000
8. Other Direct Expenses	\$ 24,190	\$ 24,190	\$ 24,190	\$ 24,190	\$ 24,190	\$ 24,190	\$ 24,190	\$ 24,190	\$ 24,190	\$ 24,190	\$ 24,190	\$ 24,190	\$ 24,190	\$ 290,282
10. Interest	\$ 9,352	\$ 9,352	\$ 9,352	\$ 9,352	\$ 9,352	\$ 9,352	\$ 9,352	\$ 9,352	\$ 9,352	\$ 9,352	\$ 9,352	\$ 9,352	\$ 9,352	\$ 112,222
11. Depreciation	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 18,928	\$ 227,142
12. Rent	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 40,026	\$ 480,312
TOTAL EXPENSES	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 2,690,838
SUMMARY OF REVENUE AND EXPENSES														
Total Revenue	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 3,453,690
Total Expenses	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 224,236	\$ 2,690,838
Surplus / (Loss)	\$ 63,571	\$ 63,571	\$ 63,571	\$ 63,571	\$ 63,571	\$ 63,571	\$ 63,571	\$ 63,571	\$ 63,571	\$ 63,571	\$ 63,571	\$ 63,571	\$ 63,571	\$ 762,852
MONTHLY CASH FLOW ANALYSIS														
Sources of Cash														
Initial Equity & Working Capital Loan	\$ 253,203													
Addition to Accounts Receivable	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808
Collections on A/R	\$ 14,390	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808
Net A/R monthly balance	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417	\$ 273,417
TOTAL SOURCES	\$ 267,593	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808	\$ 287,808
Uses of Cash														
Addition to Accts Payable	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308
Payments on A/P	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308
Net A/P monthly balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL USES	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308	\$ 205,308
SOURCES MINUS USES	\$ 62,285	\$ 82,499	\$ 82,499	\$ 82,499	\$ 82,499	\$ 82,499	\$ 82,499	\$ 82,499	\$ 82,499	\$ 82,499	\$ 82,499	\$ 82,499	\$ 82,499	\$ 82,499
ENDING CASH BALANCE	\$ 62,285	\$ 144,784	\$ 227,284	\$ 309,783	\$ 392,283	\$ 474,782	\$ 557,282	\$ 639,781	\$ 722,281	\$ 804,780	\$ 887,280	\$ 969,779		

MOHAWK VALLEY EC, LLC

Utilization by Payor

	Year One 2011	Year Two 2012	Year Three 2013
Revenue / Visit			
Commercial / Fee for Service	\$ 700	\$ 700	\$ 700
Commercial / Managed Care	\$ 650	\$ 650	\$ 650
Medicare	\$ 379	\$ 379	\$ 379
Medicaid / Fee-for-Service	\$ 538	\$ 538	\$ 538
Medicaid Managed Care	\$ 547	\$ 547	\$ 547
Self Pay	\$ 294	\$ 294	\$ 294
Payor Mix			
Commercial / Fee for Service	2%	2%	2%
Commercial / Managed Care	69%	69%	69%
Medicare	25%	25%	25%
Medicaid / Fee-for-Service	1%	1%	1%
Medicaid Managed Care	2%	2%	2%
Self Pay	1%	1%	1%
Visit Volume by Payor			
Commercial / Fee for Service	121	133	146
Commercial / Managed Care	4,149	4,564	5,020
Medicare	1,503	1,653	1,819
Medicaid / Fee-for-Service	46	51	56
Medicaid Managed Care	97	106	117
Self Pay	84	93	102
TOTAL	6,000	6,600	7,260
Total Revenue by Payor			
Commercial / Fee for Service	\$ 84,700	\$ 93,100	\$ 102,200
Commercial / Managed Care	\$ 2,696,850	\$ 2,966,600	\$ 3,263,000
Medicare	\$ 569,637	\$ 626,487	\$ 689,401
Medicaid / Fee-for-Service	\$ 24,748	\$ 27,438	\$ 30,128
Medicaid Managed Care	\$ 53,059	\$ 57,982	\$ 63,999
Self Pay	\$ 24,696	\$ 27,342	\$ 29,988
TOTAL	\$ 3,453,690	\$ 3,798,949	\$4,178,716

Reimbursement Rate Assumptions

Commercial Insurance (inc. HMO and PPO)

Based upon estimates of local commercial insurer payments.

Medicare

Based upon Medicare ambulatory surgery group payments for the region.

Medicaid

Based upon Medicaid APG blended rates.

Self-Pay

Based upon historical experience of the program.



Mohawk Valley E.C., L.L.C.

Specialty: Endoscopy

		Qty	Length	Width	Typ SF	Total SF	Notes
Reception	Elevator Lobby	1	10	33		330	Provide access to drinking water and telephone
	Waiting	1	17	20		328	Provide access to drinking water and telephone
	Reception	1	7	20		140	
	Wheelchair Storage	1	4	6		21	
	Female Toilet	1	6	13		81	
	Male Toilet	1	8	7		53	
	Café	1	23	31		713	
Clinical Areas	Exam Room	1	10	14		140	Provide min clear area of 80 sq ft with at least 2 foot 8 inches at side & foot of table, handwashing sink, counter and writing shelf
	Clean Storage	1	7	13		96	
	Soiled Holding	1	9	12		108	
	Procedure Rooms	4	12	20	248	992	Provide min clear area of 200 sq ft, oxygen, vacuum, suction, monolithic floor, emergency communication & acoustical privacy
	Clean Room	1	14	9		126	
	Decontam Room	1	17	10		170	Provide utility sink, freestanding handwash sink, work counter, endoscope cleaners, ventilation, vacuum/ air & monolithic flooring
	Medgas Storage	1	6	12		72	
	Prep Nurse	1	9	14		126	
	Prep Area	6	7	10	70	420	Provide handwashing sink, oxygen & suction
	Recovery Area	14	6	10	60	840	Provide handwashing sink, oxygen & suction
	Meds	1	7	13		90	Provide handwashing sink & meds storage
	Nourishment	1	2	12		26	Provide sink, counter and fridge
	Patient Toilet Rooms	2	6	7	42	84	
	Nurse Station	1	11	12		138	
	Janitor Closet	1	4	10		38	
	Supply Storage	1	13	20		250	
Staff Lounge & Dictation	1	17	20		332		
Staff Areas	Staff Lounge	1	16	23		363	Serves as multi-purpose room
	Staff Closet	1	2	8		16	
	Female Locker Room	1	8	11		88	
	Male Locker Room	1	8	13		104	
	Staff Toilet	2	6	7	42	84	
	Staff Shower Room	1	5	11		55	
	Consult Rooms	5	10	14	140	700	
	Library/ Conference	1	28	20		560	
	Vacuum	1	10	10		100	
	Data/ Elec	1	10	8		75	
	Storage	1	5	8		40	

Total Net Area	7,900 nsf
Circulation, Walls, etc	3,536 usf
Total	11,436 sq ft

187 East Market Street
Suite 180
Rhinebeck NY 12572

845 876 8202
845 876 8112 fax
optimusarchitecture.com



ARCHITECTURAL NARRATIVE

PROJECT NUMBER: Not Assigned.
Mohawk Valley E.C., L.L.C., Utica, NY.

INTRODUCTION

Mohawk Valley E.C., L.L.C. is requesting approval for a single-specialty ambulatory surgery center to perform endoscopy services.

Location

Mohawk Valley E.C., L.L.C. is to be located at 116 Business Park Drive in Utica, New York.

Purpose/Need

Mohawk Valley E.C., L.L.C. will improve access to endoscopy procedures by expanding capacity within the region. This will reduce the current patient backlog and accommodate anticipated future need. This will also assist in the recruitment and retention of trained gastroenterologists by offering them an opportunity to participate in an Ambulatory Surgery Center, which will further improve patient access to endoscopy procedures.

Existing Program Inventory

This project will establish new construction for a single specialty Ambulatory Surgery Center endoscopy procedure suite within an existing building. At this time there is no existing program inventory.

Program Inventory at Project Completion

Upon completion of this project the new facility will consist of four procedure rooms, 6 prep bays and 16 recovery bays. The facility will also house support services for these functions.

Existing Building Inventory

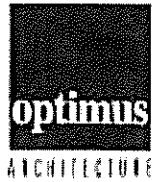
The project will consist of a new interior fit-up of 11,436 square feet located on the second floor of an existing office building. The second floor of this two story building will be vacated and converted via a complete renovation into a new Article 28 single-specialty Ambulatory Surgery Center, applying AIA Guidelines 2001 edition, Chapter 9 Out-patient Facilities, 9.9 Endoscopy Suite.

Building Inventory at Project Completion

The first floor will contain other tenants. The first floor will be separated in

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accordance with NFPA 101 with a one hour rated assemblies. The second floor will contain the Ambulatory Surgery Center. Please see the Functional Space Program.

PROJECT DESCRIPTION

The new 11,436 square foot endoscopy procedure space will be divided into two smoke compartments. One compartment will contain the clinical areas including procedure rooms, prep and recovery bays and associated support spaces. The second smoke compartment will house non-clinical areas, including staff areas, waiting room, and consult spaces.

The non-clinical area consists of the waiting room, staff and doctor lounges and lockers. The waiting room will have an area for coats and wheelchair storage, as well as access to DDM phone and drinking water.

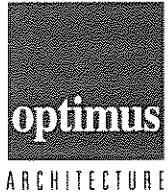
The clinical area will consist of four procedure rooms with a clear floor space of no less than 200 square feet. There will be access to a clean processing room and a decontamination room, clean storage, soiled holding room, medical gas and a janitor closet. Each patient bay will be provided with oxygen and suction and be monitored by staff at nurse stations.

CONCLUSION

The Mohawk Valley E. C., L.C.C. project will respond to the increased local demand for endoscopy procedures. It will improve access to endoscopy procedures by expanding capacity in the region. It will reduce the current patient backlog and accommodate anticipated future need. It will also assist in the recruitment and retention of trained gastroenterologists by offering them an opportunity to participate in an Ambulatory Surgery Center, which will further improve patient access to endoscopy procedures.

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October 30, 2009

NYS Department of Health/Office of Health Systems Management
Division of Health Care Planning and Resource Management
Bureau of Architectural and Engineering Review
433 River Street, Suite 303
Troy, NY 12180-2299

Re: Project Number: Not Assigned
Name: Mohawk Valley E.C, L.L.C.
Location: 116 Business Park Drive, Utica, NY 13502
Description: Establish and construct a freestanding single-specialty Ambulatory Surgery Center for endoscopy procedures to be located on the second floor of an existing multiple tenant office building.

Gentlemen:

This is to certify that under the terms of my contract for the above-named facility to provide services to design, prepare working drawings and specifications, and during construction to make periodic visits to the site and to perform such other required services to familiarize myself with the general progress, quality and conformance of the work, I have ascertained that to the best of my knowledge, information and belief, this project will be designed in substantial compliance with the provisions of the construction sections of the State Hospital Code, which are in effect at the time this application is being submitted.

I also certify that I have read and understood the conditions of Section 710.1 of 10 NYCRR.

11.6.09
Date


David A. Souers, AIA, ASHE, ACHA

Professional NYS License No. 017367-1

