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June 10, 2016

RECEIVED

JUN 15 2016

**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

Ms. Courtney Avery, Administrator
Illinois Health Facilities and Services Review Board
2nd Floor
525 West Jefferson Street
Springfield, IL 62761

**Re: Elmhurst Outpatient Surgery Center, L.L.C. CON Permit Project
No. 97-028**

Dear Ms. Avery,

Enclosed please find an original and two copies of Frederick M. Tiesenga's Illinois Health Care Worker Self-Referral Act Advisory Opinion Request, along with the associated Notice of Filing. Kindly return to me one file-stamped copy in the enclosed, self-addressed stamped envelope.

Please contact me if you have any questions.

Sincerely yours,

TIESENGA REINSMA & DEBOER LLP



Edward N. Tiesenga

ENT/hb
Enclosures

ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD

ILLINOIS HEALTH CARE WORKER SELF-REFERRAL ACT ADVISORY OPINION
REQUEST OF FREDERICK M. TIESENGA, M.D.

IN RE: Elmhurst Outpatient Surgery Center, L.L.C.
CON Permit Project No. 97-028

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NOTICE OF FILING BY MAIL

HEALTH FACILITIES &
SERVICES REVIEW BOARD

TO: Ms. Courtney Avery, Administrator
Illinois Health Facilities and Services Review Board
2nd Floor
525 West Jefferson Street
Springfield, IL 62761

PLEASE TAKE NOTICE that Frederick M. Tiesenga filed by mail with the Illinois Health Facilities and Services Review Board, in Springfield, Illinois, on June 10, 2016, his **ILLINOIS HEALTH CARE WORKER SELF-REFERRAL ACT ADVISORY OPINION REQUEST**, the original of which is hereby served upon you.

Attorney for Frederick M. Tiesenga

By: _____


One of his Attorneys

Edward N. Tiesenga, Esq.
TIESENGA REINSMA & DEBOER LLP
1200 Harger Road, Suite 830
Oak Brook, IL 60523
(630) 645-9881

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a copy of the above-described document was served upon the above-named by placing a copy of same in the U.S. Mail, Oak Brook, Illinois, postage prepaid on June 10, 2016.



**ILLINOIS HEALTH CARE WORKER SELF-REFERRAL ACT ADVISORY
OPINION REQUEST**

**IN RE: Elmhurst Outpatient Surgery Center, L.L.C.
 CON Permit Project No. 97-028**

QUESTIONS PRESENTED

Frederick M. Tiesenga, M.D. (“Dr. Tiesenga”), pursuant to Title 77, Chapter II, Subchapter b, Part 1235, Section 1235.300 of the Illinois Administrative Code (“Code”), hereby submits to the Office of the Executive Secretary of the Illinois Health Facilities Planning Board (“State Board”) this request for an advisory opinion regarding whether the Elmhurst Outpatient Surgery Center, L.L.C. (the “Elmhurst Surgery Center”) is unlawfully in violation of the Illinois Health Care Worker’s Self-Referral Act (the “Act”), 225 ILCS 47/20, Section 20(b)(2), by requiring Dr. Tiesenga to refer and perform surgical procedures at the existing facility holding CON Permit Project No. 970028, in which Dr. Tiesenga currently has a financial involvement.

Section 20(b)(2) of the Act states:

No health care worker who invests shall be required or encouraged to make referrals to the entity *or otherwise generate business* as a condition of becoming *or remaining* an investor [emphasis added]

The Act in Section 5 states in relevant part that

The General Assembly finds that these referral practices may limit or completely eliminate competitive alternatives in the health care market

The Act provides that this State Board has the authority and the duty to review and respond to a request for an opinion as to whether an Entity, here the Elmhurst Surgery Center, is violating Section 20 of the Act.

The questions presented for the State Board's Opinion:

1. May the Elmhurst Surgery Center force me to generate more business for the Elmhurst Surgery Center, by requiring me to perform less surgery at every other hospital where I currently have surgical privileges, as a condition of allowing me to remain an investor in the Elmhurst Surgery Center?; and
2. May the Elmhurst Surgery Center properly threaten me with federal Stark Act regulations--which regulate referrals of surgery to surgery centers, where the referring surgeon is an investor in the surgery center making profit from surgery on the referred patients not performed by the referring surgeon—when I have never referred a surgical case to the Elmhurst Surgery Center that I have not personally performed; and may the Elmhurst Surgery Center use the Stark safe harbor to override the prohibition of Section 20(b)(2) of the Act, rendering that portion of the Act unenforceable by the State Board?; and
3. May the Elmhurst Surgery Center disregard 42 C.F.R. Section 1001.952(r)(3), which says the same thing as Illinois law, when the federal regulation says:
 - (i) The terms on which an investment interest is offered to an investor must not be related to the previous or expected volume of referrals, services furnished, or the amount of business otherwise generated from that investor to the entity.
 - (v) The amount of payment to an investor in return for the investment must be directly proportional to the amount of the capital investment...of that investor.

and may the Elmhurst Surgery Center instead require a minimum level of “services furnished” in order for the Elmhurst Surgery Center to agree to continue to pay returns to an investor directly proportional to the amount of that investor’s capital investment?; and

4. May the Elmhurst Surgery Center continue to qualify to hold its current Certificate of Need which was obtained based on sworn factual representations that the patient base to be served by the Elmhurst Surgery Center was already in place at Elmhurst Memorial Hospital, and would not need to be cannibalized from other hospitals by pressuring investor surgeons to reduce their surgery at other hospitals in order to keep their investment in the Elmhurst Surgery Center?

FACTS AND DOCUMENTS FORMING THE BASIS OF REQUESTED OPINION

1. Affidavit of Frederick M. Tiesenga, M.D. (Exhibit A).
2. May 6, 2016 Letter to LLC Managers of Elmhurst Outpatient Surgery Center, L.L.C. (Exhibit B).
3. “Term Sheet” circulated by Elmhurst Surgery Center detailing equity stripping proposal to apply to investor surgeons who fail to generate sufficient surgery to remain in investor in the Elmhurst Surgery Center (Exhibit C).
4. Operating Agreement of the Elmhurst Surgery Center (Exhibit D).
5. “Ballot” used to seek investor votes to adopt equity stripping amendment to LLC Operating Agreement (Exhibit E).

Exhibit A

**ILLINOIS HEALTH CARE WORKER SELF-REFERRAL ACT ADVISORY
OPINION REQUEST**

**IN RE: Elmhurst Outpatient Surgery Center, L.L.C.
 CON Permit Project No. 97-028**

AFFIDAVIT OF FREDERICK M. TIESENGA, M.D.

Frederick M. Tiesenga (the “Affiant”), being first duly sworn, does upon his oath hereby affirm that the statements contained in this Affidavit are true and correct, except as to any matters herein stated to be based on information and belief, and as to such matters, I hereby certify that I verily believe the same to be true. I make this Affidavit based on my personal knowledge, and if called to testify as a witness in the above-referenced matter, can competently do so based on my own personal knowledge as to the following:

1. Affiant has been a licensed physician and surgeon in the State of Illinois, effective as of June 16, 1993 and continuing to present, holding Illinois Department of Financial and Professional Regulation License No. 036086475.

2. Affiant practices medicine in a group setting from offices located in Elmwood Park Illinois through the entity Tiesenga Surgical Associates, S.C., an Illinois medical corporation (“TSA”) holding Illinois Department of Financial and Professional Regulation License No. 042000966.

3. TSA employs eight (8) surgeons, including the Affiant, and TSA’s main Elmwood Park office and three additional satellite offices employ three (3) nurse

practitioners, two (2) nurses, and 18 additional administrative and secretarial staff.

TSA's satellite offices are located at Good Samaritan Hospital, Community First Hospital, and Resurrection Hospital, where surgeons other than Affiant regularly see patients.

4. Affiant holds staff or surgical privileges at the following hospitals and health systems in the State of Illinois, where he performs a variety of surgical operations:

- a. **Westlake Hospital**, where he is Director of Minimally Invasive & Bariatric Surgery;
- b. **West Suburban Hospital** where he is Chairman of the Department of Surgery, and Director of Minimally Invasive and Robotic Surgery;
- c. **Community First Hospital**, where he is Medical Director of Surgery;
- d. **Presence Health System**, where he is Director of Bariatric Services;
- e. **Oak Park Hospital**;
- f. **St. Joseph Hospital**;
- g. **Resurrection Health System**;
- h. **Mercy Hospital**;
- i. **St. Mary's Hospital**; and
- j. **Elmhurst Outpatient Surgery Center, L.L.C.** ("Elmhurst Surgery Center"), where he holds surgical privileges.

5. For purposes of this Affidavit, each hospital listed in the foregoing paragraph other than the Elmhurst Surgery Center shall be referred to as the "Other Hospitals."

6. I perform approximately 1,300 surgical cases each year, and since investing in the Elmhurst Surgery Center, have performed an average of ten (10) surgical cases per year at the Elmhurst Surgery Center. Less than one percent (1%) of my surgical cases are performed at the Elmhurst Surgery Center.

7. According to the Illinois Secretary of State's online database, the Elmhurst Surgery Center was formed January 22, 1997, and Affiant was solicited by agents of the Elmhurst Surgery Center to be an initial investor and Member of the limited liability company entity so formed at that time.

8. Affiant agreed to become an investor in the Elmhurst Surgery Center, and contributed thirty thousand dollars (\$30,000) in exchange for three (3) units of the Elmhurst Surgery Center; and later I contributed an additional twenty-seven thousand five hundred dollars (\$27,500) for one (1) additional unit, for a total investment of fifty seven thousand five hundred dollars (\$57,500) which I continue to hold at present, making me a Member, according to the terms of the Elmhurst Surgery Center's Operating Agreement originally dated May 1, 1997, and since amended and restated March 24, 2008 (the "Operating Agreement").

9. According to the Illinois Secretary of State's online database, the Elmhurst Surgery Center is managed by five doctors: Gordon Kinzler, Salil V. Doshi, Harry Siavelis, Nabil Barakat, and Spero Kinnas.

10. Upon information and belief, a large percentage of the Member interest in the Elmhurst Surgery Center is owned by Elmhurst Memorial Hospital (EMH), upon further information and belief now known as Edward-Elmhurst Health ("EEH"). EEH in effect controls the EMH interest in the Elmhurst Surgery Center, and thus EEH according

to the Operating Agreement has certain management rights over the Elmhurst Surgery Center in addition to any rights it may have as an owner of an interest in the Elmhurst Surgery Center.

11. EEH also owns or controls three hospital facilities located in the DuPage County surgical market, including Edward Hospital—Main Campus in Naperville; Elmhurst Hospital—Main Campus in Elmhurst; and Linden Oaks Behavioral Health—Naperville Main Inpatient Campus.

12. At the time EMH was petitioning the Illinois Health Facilities Planning Board (“Board”) for a Certificates of Need (“CON”) to build a new medical campus on the site of the former Celozzi-Ettelson Chevrolet dealership in Elmhurst (the “Memorial Center for Health”), in addition to the existing EMH Hospital facility in central downtown Elmhurst, EMH also petitioned the Board for a CON to build what became the Elmhurst Surgery Center, which was technically identified as an Ambulatory Surgical Treatment Center (“ASTC”), which EMH told the Board was needed to perform surgery for the new medical campus, known as the “Memorial Center for Health.”

13. In the over 2,500 pages of administrative proceedings generated by the public hearing demanded by competing hospitals who opposed the EMH CON petitions, as reported in the case of *Dimensions Medical Center Ltd., v. Elmhurst Outpatient Surgery Center*, No. 4-99-0030 (4th Dist, Sept. 29, 1999), the Illinois Department of Public Health (“Department”) made a finding that the EMH

existing surgical facilities at the [downtown Elmhurst location] hospital were overcrowded and not adequately designed to accommodate outpatient surgery patients. Because Memorial’s proposed ASTC would improve access to care for those patients by eliminating the need for them to choose between changing physicians or using the overcrowded hospital facilities.

14. EMH made further representations to the Department, also recounted by the court in *Dimensions Medical Center Ltd.*, including that

The vast majority of patients to be treated at [the proposed ASTC] ***could not be treated at any other facility because their surgeons are not on the medical staffs and do not have privileges at those facilities.*** [emphasis added]

15. EMH made further representations to the Department, also recounted by the court in *Dimensions Medical Center Ltd.*, including that

the projected caseload for the [proposed ASTC] is based ***solely upon outpatient surgical cases which were performed at [Memorial]***, regardless of whether any of the surgeons performing those cases also had medical[-]staff privileges at any ASTC. [emphasis added]

16. Based on these material facts represented by EMH to the Department, the court in *Dimensions Medical Center Ltd.*, ruled that

Here, Memorial demonstrated that the proposed facility's target population would be Memorial's existing patient base, and no one has seriously challenged that position in either the administrative hearing or on appeal. [...] Thus, the Board could appropriately conclude that the proposed facility was "necessary to improve access to care" for Memorial's ***existing patient base***... [emphasis added]

17. Fast-forward to today, and since the time that this Board granted the CON for the Elmhurst Surgery Center, EMH built yet another hospital to the West of the Elmhurst Surgery Center and the Memorial Center for Health, and in 2011 moved the main functions of EMH from its old downtown Elmhurst location, to the new 866,000 square foot hospital facility with 259 patient rooms now referred to as the EEH Main Campus—Elmhurst. This main campus includes technologically advanced surgical suites as part of the high-quality integrated health care offered by EEH.

18. Following the 2011 move, EEH Elmhurst experienced severe financial distress, and had difficulty attracting surgeons to perform procedures at the EEH Main

Campus—Elmhurst. These financial difficulties were part of the decision by EMH to merge with Edward Hospital of Naperville, resulting in the EEH system now comprising EMH and Edward Hospital, as well as Linden Oaks.

19. Contrary to the EMH representations to the Department referred to at paragraphs 12-15 above, the Elmhurst Surgery Center has not produced as much surgery for EEH as EEH has stated it would like to have.

20. Contrary to the EMH representations to the Department referred to at paragraphs 13-16 above, EEH has struggled to create enough existing patient base to fully utilize all of the new facilities it has built, including the Elmhurst Surgery Center, and Affiant has been told that EEH must restructure the Elmhurst Surgery Center to make more ownership interest available to new surgeons being recruited to EEH who are promising to bring more surgical cases with them to supplement the existing EEH patient base. These statements were made by Dr. Belavic as a Manager of the Elmhurst Surgery Center at the Annual Shareholder's Meeting on April 5, 2016 at Francesca's Amici restaurant, 174 North York Road, Elmhurst, Illinois, beginning at 6:00 pm. Dr. Belavic further stated that EEH planned to recruit new surgical groups by using "larger blocs of shares" in the Elmhurst Surgery Center as an incentive to lure established practices such as Hinsdale Orthopaedic to increase the patient base of the Elmhurst Surgery Center. Other "big groups" were also mentioned, with the comment that these "big groups" will only consider coming to Elmhurst if they get a "big share" of the Elmhurst Surgery Center Member interest.

21. At this April 5, 2016 meeting, Dr. Belavic informed me that if I did not increase my volume of surgery at the Elmhurst Surgery Center, then I had a choice: get

bought out now and stop operating at the Elmhurst Surgery Center, or stay in and risk getting bought out later as a steep discount as a punishment for not getting out now.

22. Dr. Belavic explained that due to the EEH deal-making in progress with “big groups,” the Elmhurst Surgery Center was “changing the operating agreement” to add a new rule that one-third (1/3) of any investor surgeon’s *income* must come from the Elmhurst Surgery Center, and that my books and records must be produced for audit.

23. To implement the objective of attracting more surgeons to increase the existing patient base of EEH, EEH developed a strategy to offer investment interests in the Elmhurst Surgery Center, and those interests would be taken away from any current surgeon investors in the Elmhurst Surgery Center who were not doing “enough” surgical cases at the Elmhurst Surgery Center. On February 19, 2016, while I was at the Elmhurst Surgery Center to perform a surgical procedure, Dr. Belavic, one of the Managers of the Elmhurst Surgery Center, explained to me that this weeding-out process would be accomplished by threatening any surgeon who was not doing one-third (1/3) of all of that surgeon’s cases at the Elmhurst Surgery Center, with a “new rule” that the United States Department of Health and Human Services, Office of Inspector General (“OIG”) was using to “crack down” on surgery centers that were not compelling their investor surgeons to do at least one-third (1/3) of their surgical procedures at the ASTC. Dr. Belavic informed me that this would now apply to me, and that I should plan to increase the quantity of my surgical procedures performed at the Elmhurst Surgery Center, by decreasing the quantity of my surgical procedures performed at Other Hospitals. If Affiant did not comply with this “OIG Rule,” my equity in the Elmhurst Surgery Center would be stripped and made available to another surgeon who would

promise to bring more surgical procedures to the Elmhurst Surgery Center to increase the existing patient base of EEH. Dr. Belavic further represented to me that several surgeons had already “cashed out” of the Elmhurst Surgery Center rather than attempting to comply with this new “rule.”

24. Affiant wrote a letter to the Managers of the Elmhurst Surgery Center outlining several concerns with the “33% Surgical Business Requirement” and a true and accurate copy of that letter is attached hereto and incorporated herein.

25. Affiant’s letter outlines the wrongful motive and improper use being made of “safe harbor” rules governing referrals I have never engaged in, as a justification for compelling me to curtail surgery at Other Hospitals and shift that surgery to the Elmhurst Surgery Center to increase the EEH patient base .

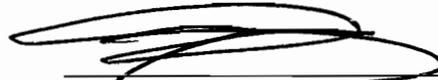
26. In a subsequent conversation with one of the Managers of the Elmhurst Surgery Center, which took place Friday, May 13, 2016 at West Suburban Hospital with Dr. Doshi, Dr. Doshi informed Affiant bluntly that “if you do not do 1/3 of your cases at the Elmhurst Surgery Center, you are out. And you must prove that 1/3 of your income has to come from there.” Dr. Doshi added that “it is perfectly legal what we are doing and we have had our lawyers look at this.”

27. Affiant concludes that as a condition of retaining his investment in the Elmhurst Surgery Center, he will be required to divert one-third (1/3) of the operations from his current patient base at Other Hospitals, reducing utilization of those Other Hospital surgical facilities in order to add to the existing patient base at the Elmhurst Surgery Center.

28. Affiant's reduction of surgical procedures currently being performed at Other Hospitals will restrict patient choice preferring those hospitals, and will reduce the competition Elmhurst Surgery Center faces in the surgical market by creating a captive patient base enforced by a financial penalty to me in the event I do not comply with orders to create my assigned portion of this captive patient base.

29. I received an "Official Ballot" according to which the Managers of the Elmhurst Surgery Center is seeking to adopt the "term sheet" to add the equity-stripping language to the Operating Agreement, to require me and each other surgeon investor to perform less surgery at other facilities, in order to perform more surgery at the Elmhurst Surgery Center. The "Ballot" set a date of May 23, 2016 for me to agree to this or be stripped of my investment.

Further affiant sayeth naught.


Frederick M. Tiesenga, M.D.

Dated: 6-10, 2016

STATE OF ILLINOIS)
)SS
COUNTY OF DUPAGE)

I, Beverly Ann Gatz, a notary public in and for said County, in the State aforesaid, do hereby certify that Frederick M. Tiesenga, M.D., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act.

Given under my hand and notarial seal this 10th day of JUNE, 2016.


Notary Public

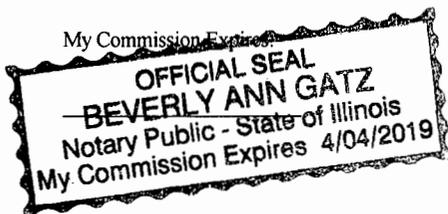


Exhibit B

FREDERICK M. TIESENGA, M.D.

1950 N. Harlem Avenue
Elmwood Park, IL 60707

May 6, 2016

Gordon Kinzler, M.D.
Salil V. Doshi, M.D.
Harry Siavelis, M.D.
Nabil Barakat
Spero Kinnas
In your capacity as LLC Managers of
ELMHURST OUTPATIENT SURGERY CENTER, L.L.C.
1200 S. York Rd.
Elmhurst, IL 60126

Re: 33% Surgical Business Requirement

Gentlemen,

I write to you in your capacity as the Managers listed on the Illinois Secretary of State database, in charge of managing the ELMHURST OUTPATIENT SURGERY CENTER, L.L.C. , an Ambulatory Surgical Treatment Center (the "ASC"). As I read the ASC's Operating Agreement, you are the ones responsible for managing the ASC, and—whether or not you did so—you are the ones who are accountable to each ASC member for the action taken by Dr. Andrew Belavic, whom I understand to be the Medical Director of the ASC, insofar as Section 3.2.1(a) says that you appointed him by a supermajority vote. Presumably he is acting with your authority, or at least on your behalf, when he transmits to me the attached document, along with the message to me that in light of my failure to refer more surgery to the ASC, my member interest in the ASC will be stripped away from me, to be resold to another doctor who will refer more surgery to the ASC. Supposedly the language on this sheet of paper he sent me justifies this.

I don't think so.

Let's start with the facts of my practice and what I do with the ASC. I bought four (4) units of the ASC when it started, and have never referred a patient to the ASC that I did not personally operate on. The only time I send a patient to the ASC is when I personally do the surgery on that patient.

The Operating Agreement does not require me to perform any minimum number of procedures at the ASC, nor does it require me to send patients to the ASC for other doctors to operate on. Section 10.1.28 of the Operating Agreement does, however, refer to a section of Illinois law—the Illinois Health Care Worker's Self-Referral Act, and it says if I violate that, then I have committed a "Withdrawal Event." Have I violated that Act by only doing my own surgery and not providing a stream of referrals to the ASC for other doctors to do?

I asked a lawyer. I learned that Section 5 of that Act says the opposite—that it is the public policy of Illinois to outlaw surgicenters requiring doctor investors to refer any patients at all to the surgicenter as a condition of owning an interest in the entity. In fact, this very law says that the Illinois “General Assembly finds that these referral practices may limit or completely eliminate competitive alternatives in the health care market.” In other words, my decision not to refer patients to the ASC for others to work on is helping to preserve competitive alternatives in the health care market.

The Illinois law at Section 5 also says that the Illinois Health Facilities and Services Review Board is the sole and exclusive source for implementing and interpreting the Act through rules to be adopted by the Board. And it turns out the Board has done this, which is found at Section 1235.100 of the Illinois Administrative Code, under the heading “Prohibited Referrals.” Here’s what it says about the kind of referrals prohibited by this Act:

The following patient referrals are prohibited under the Act:

- a) *patient referrals to an entity outside the health care worker’s office or group practice in which the health care worker is an investor, unless:*
 - 1) *the health care worker directly provides health services within the entity and will be personally involved with the provision of care to the referred patient.*

This Board regulation describes what I do—I personally provide the care to each patient I send to the ASC. There is no prohibition on me personally doing surgery at the ASC.

But must I do at least 33% of my surgery at the ASC? That is what Dr. Belavic tells me I must now do, or else lose my LLC member interest?

Let’s look at the “Purpose of the Extension of Practice Requirements.” Again, I asked a lawyer to tell me what it was. I learned that this summary of “Extension of Practice Requirements” lays out the roadmap for how a doctor who is invested in a surgicenter can safely navigate the federal anti-referral and anti-kickback laws, while still referring patients to the ASC for other doctors to work on, to generate profits that the doctor gets by virtue of owning an LLC member interest in the ASC.

But I don’t do that at all.

Since I don’t refer any such work, and only personally do my own cases at the ASC, there is no stream of referral income I am creating outside of my personal work. There is nothing to be protected by the “safe harbor” rules described in the “Extension of Practice Requirements.” I am free to navigate outside the safe harbor. I don’t need it. I would if I did what the ASC says they want to see—if I referred more surgery to the ASC that I did not perform.

I kept reading the Illinois Act, and got to Section 20(b)(2), which says “No health care worker who invests shall be required or encouraged to make referrals to the entity or otherwise generate business as a condition of becoming or remaining an investor.” And later, in Section 20(b)(5), it says “The income on the health care worker’s investment shall be tied to the health care worker’s equity in the facility rather than to the volume of the referrals made.”

This Illinois law is incorporated by reference into the ASC's Operating Agreement, so why, when this is quite clear, have I been told that I "shall be required or encouraged to make referrals to the entity or otherwise generate business as a condition of....remaining an investor?" And why am I being told that my investment in the ASC cannot continue to generate income for me unless it is "tied tothe volume of the referrals" I make to the ASC?

I see that the Illinois law also helpfully includes a provision at Section 20(g) encouraging me, as a health worker, to request from the Illinois Health Facilities and Services Review Board, that they give me an advisory opinion on whether my current pattern of only personally performing surgery on my patients at the ASC, and not referring cases to the ASC for other doctors to perform, violates Illinois law and thus the Operating Agreement.

Before doing that, I wanted to see what you think. There is the possibility that Dr. Belavic may not have clearly communicated ASC policy to me; and it could certainly be the case that the federal safe harbor rules summarized in the paper I received have taken on a life of their own, and are being used not to help me get around the anti-kickback rules for referrals I do not make, but are being used to attempt to force me to refer cases I do not perform, as a condition of keeping my units. This of course is manifestly not the intent of the safe harbor rules, since that reading of them would violate Illinois law, as well as the Federal Regulation that contains the safe harbor rule to begin with. I refer to the very C.F.R. identified in the second footnote of the "Extension" memo—42 C.F.R. Section 1001.952(r)(3), which says the same thing as Illinois law, when the federal regulation says:

- (i) The terms on which an investment interest is offered to an investor must not be related to the previous or expected volume of referrals, services furnished, or the amount of business otherwise generated from that investor to the entity.
- (v) The amount of payment to an investor in return for the investment must be directly proportional to the amount of the capital investment...of that investor.

About all I can find of any conceivable merit in the information I have received from Dr. Belavic is a concern on the part of the ASC that although I do not presently make any referrals of any patients that I do not personally service, perhaps someday I might, and if so, there would be no assurance that I could meet the safe harbor terms of the "1/3 Performance Test." Let me resolve that non-current, hypothetical future concern right now.

I hereby certify to the ASC that I have never, presently do not, and in the future will never, refer to the ASC any surgical patient for whom I do not personally perform all surgical services. This certification shall continue in force and the ASC may rely upon it until such time as I modify or revoke this certification in writing to the ASC. In the meantime, during all times that the ASC relies on this certification, if I ever violate any anti-kickback or other referral laws, I will personally and without limit, unconditionally indemnify the ASC and all other members and managers for any damages or penalties caused by my unlawful referral of patients to the ASC for whom I do not personally perform surgical services.

In summary, because I do all of my own surgery, and am not feeding cases into the ASC to make a profit on the work of other surgeons doing the work on my referrals, the 33% safe harbor does not apply to me. And the 33% defensive safe harbor is certainly not a sword—or even a scalpel—to be used against me for not generating more business for the ASC by doing more of my own work at the ASC. A case I do can never by definition be a “prohibited referral” that needs the shelter of the safe harbor.

Please let me know if the ASC will continue to pressure me to give up my four (4) units in the LLC unless I refer more surgery to the ASC. I will await your response, and will not contact the Board to review this matter with them until I have your response.

Thank you.

Frederick M. Tiesenga, M.D.

Frederick M. Tiesenga, M.D.

cc: LLC Members

Purpose of the Extension of Practice Requirements.

The Extension of Practice Requirements are intended to reduce potential exposure of the Company and its investors under the federal anti-kickback law (42 U.S.C. 1320a 7b(b)) (the “Anti-Kickback Statute”), which prohibits the offer, solicitation, payment or receipt of direct or indirect remuneration in exchange for, or to induce, referrals of items or services for which payment may be made under a federal health care program. Particular concern arises with respect to ambulatory surgery centers (ASCs) when investing physicians serve as indirect referral sources without using the ASC as an extension of their practice.

In safe harbor regulations under the Anti-Kickback Statute for ASCs with hospital and physician investors¹ (the “Hospital/Physician ASC Safe Harbor”) and for multi-specialty ASCs² (the “Multi-Specialty ASC Safe Harbor”), the Department of Health and Human Services Office of Inspector General (“OIG”) has recognized that surgeons who use an ASC as an extension of their practice can invest in the ASC without violating the Anti-Kickback Statute so long as certain other conditions are satisfied. The Hospital/Physician ASC Safe Harbor provides that returns made to an investor on an investment interest, such as a dividend or interest income, are not considered remuneration in violation of the Anti-Kickback Statute if the elements of this safe harbor are satisfied. With respect to a multi-specialty ASC, the Hospital/Physician ASC Safe Harbor includes extension of practice standards from the Multi-Specialty ASC Safe Harbor. In order to satisfy these safe harbor elements, each physician investor (other than those who are not employed by the ASC entity or by any investor, are not in a position to provide items or services to the entity or any of its investors, and are not in a position to refer patients directly or indirectly to the entity or any of its investors) would need to:

1. Be in a position to refer patients directly to the ASC and perform procedures on such referred patients;
2. Derive at least one-third of his or her medical practice income from all sources in any given fiscal year or twelve month period from the performance of Outpatient Surgical Procedures³ (the “1/3 Income Test”); and
3. Perform at least one-third of his or her Outpatient Surgical Procedures in any given fiscal year or twelve month period at the ASC (the “1/3 Performance Test” and, along with the 1/3 Income Test, the “Safe Harbor 1/3 Tests”).

¹ 42 C.F.R. § 1001.952(r)(4).

² 42 C.F.R. § 1001.952(r)(3).

³ “Outpatient Surgical Procedures” are defined as surgical procedures on the list of Medicare-covered procedures for ambulatory surgery centers (ASCs).

Exhibit C

Attached is a Term sheet with proposed changes to the operating agreement to be adopted by vote of the membership. The major changes are noted in red and below are some examples on how it might affect a current investor's investment redemption value. The reasons for the recommended amendments are to allow the Corporation to be able to **Reissue Units from the 56% EMH (Class B Units)** to Physicians or a Physician Groups (Class C) as well as for the **Purpose of the Extension of Practice Requirements**.

The Extension of Practice Requirements are intended to reduce potential exposure of the Company and its investors under the federal anti-kickback law (42 U.S.C. 1320a 7b(b)) (the "Anti-Kickback Statute"), which prohibits the offer, solicitation, payment or receipt of direct or indirect remuneration in exchange for, or to induce, referrals of items or services for which payment may be made under a federal health care program.

Current Operating agreement PHYSICIAN REDEMPTIONS = current value of investors Capital account adjusted for such Members share of the Profits and Losses of the Company.

New Terms:

PHYSICIAN REDEMPTIONS - Without Cause = (Designated Company Value) x (% interest).

Designated Company Value = the greater of (i) 4 x EBITDA annual average for the past 2 years prior to the withdraw, minus any long-term debt of the Company, as most recently determined by an independent appraiser selected by the Board of Managers and adopted by the Board of Managers, or (ii) the purchase price paid prior to the adopted April 2016 term sheet amendments by the withdrawing Member for the Unit, minus any long-term debt of the Company. Designated Company Value to be determined at least every 2 years (more often as determined by the Board of Managers).

HYPOTHETICALLY

(If EBITDA is determined to be \$7,000 avg/unit for past 2 years)

Example A:

Owner of one unit which was purchased for \$15,000 is now worth (4 x EBITDA) \$28,000 minus the members portion of any long-term debt of the Company.

Example B:

Owner of one unit which was purchased for \$32,000 and (4 x EBITDA) = \$28,000. Unit at redemption is now worth purchase price prior to the adopted April 2016 term sheet amendments \$32,000 minus the members portion of any long-term debt of the Company.

PHYSICIAN REDEMPTIONS – With Cause .

For cause redemption price = the lesser of (i) the purchase price paid by the withdrawing Member for the Units, minus any paid dividends from the past 12 months, and minus any long-term debt of the Company , or (ii) the without cause redemption price, minus any paid dividends from the past 12 months, and minus any long-term debt of the Company. Unless the unit was purchased prior to the adopted April 2016 term sheet amendments; for cause redemption price = the purchase price paid by the withdrawing Member for the Unit, minus any paid dividends from the past 12 months, and minus any long-term debt of the Company.

HYPOTHETICALLY

(If EBITDA is determined to be \$7,000 avg/unit for past 2 years)

Example A:

Owner of one unit which was bought for \$20,000 and $(4 \times \text{EBITDA}) = \$28,000$ then the unit at redemption is worth the purchase price \$20,000, minus any paid dividends from the past 12 months, minus the members portion of any long-term debt of the Company.

Example B:

Owner of one unit which was bought for \$32,000 and $(4 \times \text{EBITDA}) = \$28,000$ then the unit at redemption is worth \$28,000, minus any paid dividends from the past 12 months, minus the members portion of any long-term debt of the Company.

Example C:

Owner of one unit which was purchased prior to the adopted April 2016 term sheet amendments at \$32,000 and $(4 \times \text{EBITDA}) = \$28,000$ then the unit at redemption is worth \$32,000, minus any paid dividends from the past 12 months, minus the members portion of any long-term debt of the Company.

After adoption of amendments:

1. Members who voluntarily withdraw (or submit written notice of withdrawal) **prior to the Operating Agreement amendments** will be subject to the **pre-amendment redemption price**. (Capital account as above).
2. Members who have a withdrawal event (or submit written notice of voluntary withdrawal) **within 12 months of the New Operating Agreement amendments** and **do not meet the Members without cause requirements**, will be subject to the **for cause redemption price**.
3. Members who have a withdrawal event (or submit written notice of voluntary withdrawal) **within 12 months of the New Operating Agreement amendments or after** and **do meet the Members without cause requirements** will be subject to the **without cause redemption price**.

Below is the annual average number of cases performed by a Medical Staff Physician per specialty at EOSC

General Surgery 113
Gastroenterology 180
Gynecology 23
Ophthalmology 156
Orthopedics 61
Otolaryngology 138
Pain 228
Plastic Surgery 42
Podiatry 40
Retina 60
Urology 47

For any additional questions you may contact

Member of the Board: Nabil Barakat MD
Salil Doshi MD
Gordan Kinzler MD
Spero Kinnas MD
Harry Siavelis MD
Pam Dunley
Ken Fishbain

Interim Executive Director: Andrew Belavic MD
Operations Manager: Christopher Burrow

**ELMHURST OUTPATIENT SURGERY CENTER, LLC
OPERATING AGREEMENT TERMS
April 25, 2016**

INVESTORS (MEMBERS)	Elmhurst Memorial Hospital (EMH) Physician Investors Physician Group ¹
CURRENT OWNERSHIP	56% EMH (Class B Units) 44% Physician Investors (Class A Units) 0% Physician Groups (Class C)
PRICE OF CLASS A UNITS	To be determined by Board of Managers (if issuance)
PRICE OF CLASS B OR C UNITS	To be determined by agreement of EMH and purchaser (if transfer by EMH)
PHYSICIAN INVESTOR ELIGIBILITY STANDARDS (MEMBERSHIP CRITERIA)	<p>Each Physician Interest Holder² must satisfy the following Eligibility Standards (unless waived by the Board of Managers):</p> <ul style="list-style-type: none"> • Illinois-licensed physician • In a position to refer patients directly to the Center and perform Outpatient Surgical Procedures³ • Not subject to any Health Care Adverse Event (e.g., exclusion, fraud conviction) • Maintains medical staff privileges at the Center • Satisfies Extension of Practice Requirements: (i) derives at least one-third (1/3) of his or her medical practice income from all sources for each calendar year from the performance of Outpatient Surgical Procedures and (ii) performs at least one-third (1/3) of his or her Outpatient Surgical Procedures during each calendar year at the Center⁴ • Nondiscriminatory treatment of Federal health care program (e.g, Medicare/Medicaid) patients • Disclosure of investment prior to referral (see next box)
DISCLOSURE & CERTIFICATION	<ul style="list-style-type: none"> • Prior to referral, a Physician Interest Holder must notify patients in writing of his or her investment

¹ Physician Groups may hold Units if approved by the Board of Managers.

² "Physician Interest Holder" = any physician who is a member (investor) or who holds a direct or indirect ownership or investment interest in an entity member.

³ "Outpatient Surgical Procedures" = surgical procedures on the list of Medicare-covered procedures for ambulatory surgery centers.

⁴ If a new physician investor has not been on the Center's medical staff for at least 12 months, he or she must satisfy element (i) and reasonably expect to satisfy element (ii) of the Extension of Practice Requirements.

REQUIREMENTS	<ul style="list-style-type: none"> As requested by the Board of Managers (e.g., annually), each Physician Interest Holder must certify whether (i) he or she satisfied the Extension of Practice Requirements, (ii) he or she has been subject to a Health Care Adverse Event, and (iii) all patients that he or she referred to the Center were fully informed of his or her investment A Physician Group Investor must notify the Board of Managers of any changes in ownership or control
MANAGEMENT	Manager-managed
BOARD OF MANAGERS	<p>7 person Board</p> <ul style="list-style-type: none"> 2 Class B (EMH) Managers (subject to reduction by 1 if Class B member ownership drops below 30% of all units) 5 physician Managers elected by Class A members (subject to reduction by 1 if Class C elects a Manager) If Class C members collectively own at least 15% of all Units then Class C members would elect 1 physician Manager and the number of Class A Managers would be reduced by 1 <p>Maximum number of Managers practicing within a single Physician Group is 1, unless the Physician Group and/or its Physician Interest Holders (Class A and/or Class C) collectively own at least 30% of all Units, in which case the maximum number of Managers from the Physician Group would be 2. Additionally if (Class A) board seats go unfilled the Board of Managers may waive the maximum of 1 seat, not to exceed a maximum of 2 seats per Physician Group)</p>
BOARD QUORUM	Majority of all Managers
BOARD DECISION-MAKING	<ul style="list-style-type: none"> Most day-to-day decisions require approval by a majority of sitting Managers (Section 3.2.2) Some decisions require Supermajority of Managers (majority of Class A and Class C Managers and all of Class B Managers) (Section 3.2.1)
ACTIONS REQUIRING MEMBER CONSENT	<p>The following decisions require approval from members holding more than 80% of Units (Section 5.3):</p> <ul style="list-style-type: none"> Merger, consolidation, reorganization, joint venture Sale of substantially all assets Voluntary dissolution or liquidation Capital calls
MEMBER CONSENT	Members holding a majority of all Units (except as for supermajority decisions noted above) (Section 5.4)
ADMISSION OF NEW MEMBERS	Admission of a new member requires affirmative approval by a majority of Managers (Section 7.2)
TRANSFERS	<p>Class B Member (EMH) may transfer Class B Units to Physicians who satisfy Eligibility Standards or to Physician Groups whose Physician Interest Holders satisfy Eligibility Standards, subject to Board of Managers approval. Upon such transfer, the transferred Units would be converted to Class C Units.</p> <p>Other transfers are prohibited</p>

<p>PHYSICIAN REDEMPTIONS – WITH CAUSE</p>	<p>Members are subject to expulsion <u>for cause</u> upon the following (“For Cause Withdrawal Events”):</p> <ul style="list-style-type: none"> • Health Care Program Adverse Event: <ul style="list-style-type: none"> ○ suspension, debarment or exclusion from any Federal health care program ○ civil monetary penalties ○ conviction for violation of any fraud and abuse law • Material uncured breach of the Operating Agreement • Failure to satisfy Eligibility Standards (other than due to disability or retirement) • Violation of fraud and abuse laws by the member in connection with the Center or the Company • Violation of applicable law by the member in connection with the Center or the Company
<p>MEMBER REDEMPTIONS – WITHOUT CAUSE</p>	<ul style="list-style-type: none"> • Bankruptcy of the Member; • Death of the Physician Investor; • Failure to satisfy Eligibility Standards (if due to disability or retirement) • Voluntary withdrawal with 90 days written notice
<p>REDEMPTION PRICE</p>	<p><u>Without cause redemption price</u> = (Designated Company Value) x (% interest). <u>For cause redemption price</u> = the lesser of (i) the purchase price paid by the withdrawing Member for the Unit, minus any paid dividends from the past 12 months, and minus any long-term debt of the Company, or (ii) the without cause redemption price, minus any paid dividends from the past 12 months, and minus any long-term debt of the Company. Unless the unit was purchased prior to the adopted April 2016 term sheet amendments; for cause redemption price = the purchase price paid by the withdrawing Member for the Unit, minus any paid dividends from the past 12 months, and minus any long-term debt of the Company.</p> <ul style="list-style-type: none"> • Members who voluntarily withdraw (or submit written notice of withdrawal) <u>prior</u> to the Operating Agreement amendments will be subject to the pre-amendment redemption price. • Members who have a withdrawal-event-(or submit written notice of voluntary withdrawal) within 12 months of the New Operating Agreement amendments and <u>do not meet</u> the Members without cause requirements, will be subject to the for cause redemption price. • Members who have a withdrawal event (or submit written notice of voluntary withdrawal) within 12 months of the New Operating Agreement amendments or after and <u>do meet</u> the Members without cause requirements will be subject to the without cause redemption price. <p>Designated Company Value = the greater of (i) 4 x EBITDA annual average for the past 2 years prior to the withdraw, minus any long-term debt of the Company, as most recently determined by an independent appraiser selected by the Board of Managers and adopted by the Board of Managers, or (ii) the purchase price paid prior to the April 2016 term sheet amendments by the withdrawing Member for the Unit, minus any long-term debt of the Company. Designated Company Value to be determined at least every 2 years (more often as determined by the Board of Managers).</p>

REDEMPTION PRICE CONTINUED	Redemption price plus interest is payable in 48 equal monthly installments. Redemption payments in any fiscal year will be subject to a cap of 25% of EBITDA in the immediately preceding fiscal year. (Article 8)
NON-COMPETITION	Deleted
DISSOLUTION	<p>The Company is subject to dissolution upon (Section 9.1):</p> <ul style="list-style-type: none"> • Any event making it unlawful for the business of the Company to be carried on • Affirmative approval by Members holding 80% of all Units • Denial of certificate of need (CON) or ASTC license <p>Dissolution is subject to postponement by Members holding a majority of all Units</p>

Exhibit D

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
ELMHURST OUTPATIENT SURGERY CENTER, LLC
March 24 2008**

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT (the "Agreement") having been made and entered into as of this 1st day of May, 1997 and amended and restated in its entirety on this 24 day of March, 2008 by and among the Members (as defined below).

The Members hereby agree as follows:

**ARTICLE 1.
COMPANY FORMATION AND REGISTERED AGENT**

1.1. **FORMATION.** The Members hereby agree to form a Limited Liability Company pursuant to the provisions of the Illinois Limited Liability Company Act as currently in effect. Articles of Organization consistent with this Agreement shall be filed with the Illinois Secretary of State.

1.2. **Name.** The name of the Company shall be:

ELMHURST OUTPATIENT SURGERY CENTER, LLC

1.3. **REGISTERED OFFICE AND AGENT.** The registered office and agent is as filed with the Illinois Secretary of State.

1.4. **PRINCIPAL PLACE OF BUSINESS.** The location of the principal place of Business of the Company shall be:

1200 S. York Road
Elmhurst, Illinois 60126

or at such other place as the Members from time to time select.

1.5. **DEFINED TERMS.** Terms used herein shall have the meanings ascribed to them in Article 10 hereunder.

1.6. **THE MEMBERS.** The name and address of each Member shall be as maintained in the Company's records.

**ARTICLE 2.
BUSINESS PURPOSE**

The purpose of the Company shall be to own and operate an Ambulatory Surgical Treatment Center.

**ARTICLE 3.
MANAGEMENT AND CONTROL OF BUSINESS**

3.1. MANAGERS.

3.1.1. The Board of Managers shall consist of seven (7) members. Elmhurst Memorial Hospital ("EMH") shall have the authority to appoint and remove two (2) voting members as the Class B Managers of the Board of Managers. The Members of the Company except for EMH shall have the authority to elect and remove, by a vote of a majority of the Membership Interests, five (5) voting members as the Class A Managers of the Board of Managers; provided, however, that only one (1) representative shall serve from each Physician Group as a Manager. Each Member eligible to vote shall have one vote per Membership Interest with respect to each open Manager position, but shall not have the right to cumulative votes in elections of Managers. A Member may vote by ballot in Manager elections, provided the ballot is delivered to the Board of Managers prior to the date on which the election will occur. The Managers shall not be required to manage the Company as their sole and exclusive function and shall have the right to have other business interests and engage in other activities in addition to those relating to the Company.

3.1.2. The members of the Board of Managers who are not appointed by EMH shall be divided into three (3) classes with the term of office of one (1) class expiring each year on the date of the Company's annual meeting. At the annual meeting of the Members in the year 2000, the Members (other than EMH) shall elect one (1) Manager to hold office for one (1) year; two (2) Managers to hold office for two (2) years; and two (2) Managers to hold office for three (3) years (provided that the Board of Managers shall determine which of the Managers elected in 2000 shall be assigned to each of these classes). At each annual meeting of the Members thereafter, Managers shall be elected by the Members (other than EMH) to replace those Managers who are not appointed by EMH whose terms expire at that meeting. Each Manager elected in any year after 2000 shall serve for a term of three (3) years or until such individual resigns, is removed as a Manager or until the Company dissolves, whichever occurs first. In the case of the dissolution of the Company, the Managers shall continue to act in their capacity as Managers until all of the assets of the Company have been distributed or liquidated, and all liquidation proceeds have been distributed, regardless of the actual date of the dissolution of the Company under the Act.

3.1.3. Between thirty (30) and forty-five (45) days prior to each annual meeting of the Members (or at such other times as determined by the Board of Managers), any Member may submit a written petition proposing himself or herself as a candidate for

election to a vacant Manager position or a Manager position with a term expiring in such year (other than with respect to a Manager position appointed by EMH). Such petition shall be supported by the signatures of at least two Members (other than the candidate). Such candidates may also simultaneously submit biographical information in such form as reasonably required by the Board of Managers for circulation to the Members. Any Member whose name is so submitted shall be presented to the Members for their consideration.

3.1.4. If a Manager appointed by EMH shall resign or be removed, EMH shall appoint his or her successor by written notice to the Managers. If any other Manager shall resign or be removed, the Board of Managers, excluding the two (2) EMH appointed Managers, shall appoint a successor who satisfies the signature and biographical information criteria set forth in Section 3.1.3. Any person elected to a vacancy shall serve out the remainder of the term of the Manager who has resigned or been removed.

3.2. POWER OF THE MANAGERS. Except for situations in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of the Act, the Managers shall have the authority, power and discretion to manage and control the day-to-day business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the arrangement of the Company's day-to-day business. Without limiting the generality of this Section 3.2 and subject to the powers reserved to the Members in Section 5.2 and Section 5.3, the Managers shall have the powers and authority described in Section 3.2.1 and Section 3.2.2.

3.2.1. The following powers shall require the vote of a Supermajority of Managers then in office:

- (a) To appoint and remove the Medical Director of the Company;
- (b) To approve each annual operating budget, which shall include compensation (if any) paid to Managers and officers, and any changes thereto, and each capital budget of the Company before expenditures pursuant to such budgets are made;
- (c) To approve any non-budgeted capital expenditure in excess of \$25,000;
- (d) To approve the strategic and business plans of the Company;
- (e) To incur indebtedness over \$100,000;
- (f) To create or acquire majority-controlled or majority-owned subsidiaries or affiliates of the Company;

- (g) To contract or obligate the Company under any agreement involving a term in excess of two years and payments by the Company in excess of \$100,000 per year;
- (h) To appoint and remove an Executive Director or management company to carry out the day-to-day management of the Company, with such job descriptions as may be determined from time to time by the Managers;
- (i) To approve any change in the name of the Company;
- (j) To approve any change in the types of services provided by the Company;
- (k) To approve the offering of preauthorized Units and to determine the amount to be paid by new Members for a Unit;
- (l) To approve any change in the number of authorized Units; and
- (m) To delegate to the officers or Executive Director of the Company any power or authority of the Managers set forth in Section 3.2.2 (notwithstanding the foregoing, the powers set forth in this Section 3.2.1 are nondelegable).

3.2.2 The following powers shall require the affirmative vote of a majority of the Managers then in office:

- (a) To acquire property from any Person as the Managers may determine, whether or not such Person is directly or indirectly affiliated or connected with any Manager or Member;
- (b) To borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection therewith, to pledge, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Managers or, to the extent permitted under the Act, by agents or employees of the Company expressly authorized by the Managers to contract such debt or incur such liability by the Managers;
- (c) To distribute Profits of the Company;
- (d) To purchase liability and other insurance to protect the Company's property and business;
- (e) To hold and own Company real and personal properties in the name of the Company;

- (f) To invest Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;
- (g) To approve pricing for all services provided by the Company;
- (h) To execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases, and any other instruments or documents necessary to the business of the Company;
- (i) To engage accountants, legal counsel, managing agents or other experts to perform services for the Company;
- (j) To develop, approve, and enforce policies regarding the operations of the Company, including approval of managed care contracting policies setting forth contracting parameters;
- (k) To elect and remove officers to carry out the overall policy of the Managers and the general management of the Company. The officers to be appointed, the method of appointment and the powers thereof are set forth on Exhibit A attached hereto;
- (l) To elect committee members and committee chairpersons;
- (m) To approve the admission of new Members as set forth in Section 7.2;
- (n) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business in the ordinary course to the extent not reserved to the Members in Section 5.2 or Section 5.3 or as provided by Section 3.2.1 or by the Act; and
- (o) The Managers shall have the sole authority to conduct the business of the Company and to do all acts to operate such business, subject only to the limitations expressly contained in this Agreement and by the Act, if not otherwise provided herein; provided, however, that the Managers shall have the authority to delegate, by an affirmative vote of a Supermajority of Managers then in office, any of the powers described in Section 3.2.2

3.3. MEETINGS OF THE MANAGERS.

3.3.1. Managers shall meet quarterly or more frequently as may be determined by an affirmative vote of a majority of Managers, then in office. A special meeting may be called by any three (3) Managers upon five (5) days written notice delivered to each Manager. Meetings shall be held on such date and at such place as designated in the notice of the meeting.

3.3.2. Except as otherwise provided in Section 3.3.3 below, written notice of a Managers' meeting shall be given by the Chairperson or by the Managers calling the meeting, which notice shall state the place, date and hour of the meeting and the purpose or purposes therefore. Notice of any meeting shall be given not less than three (3), or more than thirty (30) days before the date thereof. An affidavit of the Chairperson or Manager that the notice required by this Section 3.3.2 has been given, in the absence of fraud, shall be prima facie evidence of the facts therein stated. When a meeting is adjourned to another time or place, notice shall be given of the adjourned meeting to all Managers not present at the time of the adjournment. At the adjourned meeting any business may be transacted that might have been transacted at the meeting as originally called.

3.3.3. Notice of the Managers' meeting need not be given to any Manager who submits a signed waiver of notice in person, whether before or after the meeting. The attendance of any Manager at a meeting without protesting, at the commencement of the meeting, the lack of notice of such meeting shall constitute a waiver of notice by that Manager. Managers may not vote by proxy.

3.3.4. Managers may participate in a meeting of the Managers by means of conference telephone or similar communications equipment by means of which all Managers participating in the meeting can hear and communicate with one another, and such participation in a meeting shall constitute presence in person at such meeting.

3.3.5. To constitute a quorum at a meeting, a majority of all Managers must be present in person.

3.3.6. Any action which the Managers could take at a meeting may be taken without a meeting if one or more written consents, setting forth the action taken, shall be signed by all the Managers who would be entitled to vote upon the action at a meeting. This written consent may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

3.4 NO ATTORNEY-IN-FACT. Unless specifically authorized to do so by this Agreement or by the Managers of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Manager shall have any power or authority to bind the Company unless the Manager has been authorized to do so by this Agreement or by the Managers to act as an agent of the Company in accordance with the previous sentence.

3.5. LIABILITY FOR CERTAIN ACTS. Each individual shall perform his or her duties as Manager in good faith, in a manner reasonably believed to be in the best interests of the Company, and with such care as an ordinary prudent person in a like position would use under similar circumstances. A Manager shall not be liable to the Company or to any Member for any loss or damage, unless such loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct or a wrongful taking by the Manager.

ARTICLE 4.
CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; DISTRIBUTIONS

4.1. CAPITAL CONTRIBUTIONS. The Members shall contribute to the Company capital in an amount determined by the Managers pursuant to Section 3.2.1 (k) for the purchase of a Unit. The Company shall maintain a list of all Members and their corresponding Membership Interests.

4.2. CAPITAL ACCOUNTS. A separate Capital Account shall be maintained for each Member, including any additional Member who shall hereafter receive an interest in the Company. The initial Capital Account of each Member shall consist of the amount of capital contributed by the member for the purchase of a Unit or Units, and such Capital Account shall be increased by: (a) the amount of cash subsequently contributed by such Member to the Company; (b) the Agreed Value of any property subsequently contributed by such Member to the Company as reflected in the Company's records, net any liabilities secured by such contributed property assumed by the Company or to which the contributed property is subject; and (c) the amount of allocations to such Member of Profits; such Capital Account shall be decreased by: (aa) the amount of Losses and deductions allocated to such Member; (bb) the amount of cash distributed to such Member (other than as compensation deductible by the Company in computing net income); and (cc) the Agreed Value of any property distributed to such Member, net any liabilities secured by such contributed property assumed by such Member or to which such property is subject.

4.3. CAPITAL ACCOUNT MAINTENANCE. The method by which the Capital accounts are maintained hereunder is intended to comply with §704(b) of the Code and the regulations. If the Company determines that modifications are needed to comply with those provisions, then, notwithstanding anything to the contrary in this Agreement, the method by which the Capital Accounts are maintained shall be so modified, insofar as such modifications do not materially alter the economic agreement among the Members as set forth herein. As used herein, references to "book" allocations or "for book purposes" shall refer to the effect of such items on Members' Capital Accounts. The Company shall not be required to maintain additional books or Members' Capital Accounts computed in accordance with GAAP or other non-tax accounting principles.

4.4. ADDITIONAL CAPITAL CONTRIBUTIONS. Any additional capital contributed by a Member to the Company pursuant to an eighty percent (80%) vote of the Membership Interests shall be credited to such Member's Capital Account. Any other contribution to the Company by a Member in the absence of a Supermajority vote of the Managers or an eighty percent (80%) vote of the Membership Interests shall be treated as an advance by such Member to the Company and shall constitute an interest bearing debt of the Company to such Member.

4.5. PROFITS AND LOSSES. "Profits" and "Losses" mean for each Fiscal Year an amount equal to the Company's taxable income or loss for such year period, determined in accordance with §703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to § 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

4.5.1. Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section 4.5 shall be added to such taxable income or loss;

4.5.2. Any expenditure of the Company described in §703(a)(2)(B) of the Code or treated as §705(a)(2)(B) expenditures pursuant to Treasury Regulation § 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits and Losses pursuant to this Section 4.5, shall be subtracted from such taxable income or loss;

4.5.3. If property is carried on the books of the Company at its Agreed Value, gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Agreed Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Agreed Value;

4.5.4. If property is carried on the books of the Company at its Agreed Value and if the Agreed Value of such property differs from its adjusted tax basis, then the depreciation, amortization and other cost recovery deductions for such Fiscal Year or other period shall be based on the Agreed Value;

4.5.5. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to §734(b) or §743(b) of the Code is required pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining capital accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses.

4.6. ALLOCATION OF PROFIT AND LOSS. As of the end of each Company Fiscal Year, the Company's Profit or Loss for the year shall be allocated among the Members in accordance with this Section 4.6. In the event the Members' respective Profit Interests change during any Fiscal Year, the Company's Profit or Loss shall first be allocated pro rata among all of the days of the Fiscal Year, and each days income shall be allocated among the Members in accordance with their respective Profit Interests as of the end of such day. Notwithstanding the foregoing sentence, in the event of a change in the Members' respective Profit Interests during the course of the Fiscal Year, the Board of Managers by majority vote may decide to identify one or more particular items of income, gain, loss or deduction of a non-recurring nature, which items shall be subtracted from the Company's Profit or Loss prior to allocation of such Profit or Loss among the days of the year, and which items shall be allocated among the Members in accordance with their respective Profit Interests as of the date or dates such items were realized by the Company.

4.6.1. In General. Except to the extent specially allocated pursuant to Subsections 4.6.2 through 4.6.10, the Company's Profit or Loss shall be allocated among the Members in accordance with their respective Profit Interests.

4.6.2. Illinois Replacement and Other State Taxes. For any period in which a state in which the Company is subject to tax imposes an entity level income tax upon the income of the Company, and if the Company is entitled to a credit or deduction in computing that tax for income allocable to one or more (but fewer than all) Members who are separately subject to such entity level tax, the Members' respective allocable shares of the Company's Profit or Loss shall be computed first without taking the Company's tax liability into account, and the Company's tax liability shall then be specially allocated to those Members who are not separately subject to the entity level tax and for whom no credit or deduction was available to the Company.

4.6.3. Excess Losses. No allocations of Loss shall be allocated to any Member if such allocation would cause such Member to have an Adjusted Deficit Capital Account. The amount of the Loss (made up *pro rata* of amounts of loss, deduction and/or §705(a)(2)(B) of the Code expenditure making up such Loss) which would have caused a Member to have an Adjusted Deficit Capital Account shall instead be charged to the Capital Account of any Members which would not have an Adjusted Deficit Capital Account as a result of the allocation, in proportion to the positive balances in their respective Capital Accounts (adjusted pursuant to the definition of Adjusted Deficit Capital Account), or, if no such Members exist, then to the Members in accordance with their Profit Interests.

4.6.4. Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in §§ 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations, which create or increase an Adjusted Deficit Capital Account of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income and gain for such year and, if necessary, for subsequent years) shall be specially credited to the Capital Account of such Member in an amount and manner sufficient to eliminate, to the extent required

by the Regulations, the Adjusted Deficit Capital Account so created as quickly as possible. It is the intent that this Subsection be interpreted to comply with the alternate test for economic effect set forth in § 1.704-1 (b)(2)(ii)(d) of the Regulations.

4.6.5. Minimum Gain Chargeback. If there is a net decrease in the Company's minimum gain as defined in § 1.704-2(d) of the Regulations during a taxable year of the Company, then the Capital Account of each Member shall be allocated items of income (including gross income) and gain for such year (and if necessary for subsequent years) equal to that Member's share of the net decrease in Company minimum gain. The items so allocated shall be determined in accordance with §1.704-2(j) of the Regulations. This subsection is intended to comply with the minimum gain chargeback requirement of §1.704-2 of the Regulations and shall be interpreted consistently therewith. If in any taxable year that the Company has a net decrease in the Company's minimum gain, and the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion, the Members may in their discretion seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with §1.704-2(f)(4) of the Regulations.

4.6.6. Partner Nonrecourse Debt Minimum Gain Chargeback. Except as otherwise provided in §1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article 4, if there is a net decrease in partner nonrecourse debt minimum gain as determined under § 1.704(2)(i)(3) of the Regulations attributable to a partner nonrecourse debt as defined in §1.704(2)(b)(4) of the Regulations during any Fiscal Year, each Member who has a share of the partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with §1.704-2(i)(5) of the Regulations, shall be specifically allocated items of Partnership Profit and Loss for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in partner nonrecourse debt minimum gain attributable to such partner nonrecourse debt, determined in accordance with § 1.704-2(i)(4) of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with §1.704-2(j)(4) and § 1.704-2(j)(2)(ii) of the Regulations. This Subsection is intended to comply with the minimum gain chargeback requirement in §1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

4.6.7. Partner Nonrecourse Debt. Items of Company Loss and deduction (including non-deductible expenditures described in §705(a)(2)(B) of the Code) which are attributable to any nonrecourse debt of the Company and are characterized as partner (Member) nonrecourse deductions under §1.704-2(i) of the Regulations shall be allocated to the Members' Capital Accounts in accordance with §1.704-2(i) of the Regulations.

4.6.8. Nonrecourse Deductions. Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in § 1.704-2(b) of the Regulations), such deductions shall be allocated to the Members in accordance with, and as a part of the allocations of, Company Profit or Loss for such period.

4.6.9. Recapture Income. All recapture of income tax deductions resulting from the sale or disposition of Company property shall be allocated to the Members to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Member is allocated any gain from the sale or other disposition of such property.

4.6.10. Compensating Adjustments. Any special allocations to the Members pursuant to Subsections 4.6.3 through 4.6.9 above shall be taken into account computing subsequent allocations of Profits and Losses pursuant to this Section 4.6, so that to the extent possible, the Capital Accounts of each of the Members will have the balance such account would have had if the special allocations required by Subsections 4.6.3 through 4.6.9 had not been made.

4.7. ALLOCATION OF PROFIT AND LOSS FOR FEDERAL INCOME TAX PURPOSES. In general, items of taxable income, gain, deduction and loss generated by the Company shall be allocated among the Members consistent with allocations of Profit and Loss as set forth in Section 4.6 above. Consistent with §704(c) of the Code, upon the sale or disposition by the Company of any asset previously contributed by a Member, or any asset owned by the Company whose Agreed Value has been restated at any time, taxable gain or loss will be allocated among the Members in accordance with the principles of §704(c) of the Code so as to take account of any variation between the adjusted basis of such property to the Company and its Agreed Value, and depreciation or amortization deductions with respect to such property shall be allocated for tax purposes as required under §704(c) of the Code. At the discretion of the Managers, such deductions may be allocated using "curative" or "remedial" allocations, as such terms are defined in the Regulations under §704(c) of the Code.

4.8. DISTRIBUTIONS. The Company may make distributions to the Members *pro rata* in proportion to their respective Profit Interests at the discretion of the Managers as provided in Section 3.2. To the extent of available cash flow from operations (as determined at the sole discretion of the Managers), the Company may make quarterly distributions to the Members in an amount equal to the product of the total amount of the Company's taxable income or gain that is allocated or projected to be allocated to such Member for federal income tax purposes for such quarter times the highest combined state and federal income tax rates applicable to any Member, determined by the Managers.

4.9. WITHHOLDING. Each Member shall indemnify the Company for any taxes required to be withheld by the Company to the extent such amounts are distributed to the Members. Any amounts withheld by the Company on behalf of a Member shall be treated as distributed to such Member.

4.10. **DISTRIBUTION IN KIND.** Upon the unanimous vote or unanimous written consent of the Membership Interests, assets of the Company may be distributed in kind to the Members entitled to such distribution as tenants-in-common in the same proportions in which the Members could have been entitled to cash distributions had there been a sale of such assets, or to any Member or Members disproportionately in lieu of cash distributions to, or in complete or partial redemption of the Membership Interests of such Member or Members.

4.11. **PARTNERSHIP ELECTION.** The Members agree that the Company shall elect to be treated as a partnership for federal income tax purposes.

4.12. **TAX MATTERS PARTNER.** EMH is designated the "Tax Matters Partner" (as defined in Code §6231), and is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including, without limitation, administrative and judicial proceedings, to expend Company funds for professional services and costs associated therewith, and to make (or not make) any election available to be made by the Company for federal, state or local tax purposes. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

ARTICLE 5. RIGHTS AND OBLIGATIONS OF THE MEMBERS

5.1. **LIMITATION OF LIABILITY.** Each Member's liability with respect to debts, obligations or losses of the Company shall be limited to the fullest extent as provided under the Act.

5.2. **POWERS OF THE MEMBERS.** In addition to all the rights, powers, functions and responsibilities required by the Act and the Articles of Organization of the Company, the Members shall have the power to elect and remove the Board of Managers of the Company as set forth in Section 3.1.

5.3. **POWERS OF THE MEMBERS REQUIRING AN EIGHTY PERCENT VOTE OF THE MEMBERSHIP INTERESTS.** The following shall require the affirmative vote in excess of eighty percent (80%) of the Membership Interests:

5.3.1. To approve a sale of substantially all of the Company's assets and to approve all plans that substantially change the Company's organizational form, such as mergers, consolidations, reorganizations, structural or permanent affiliations or joint ventures;

5.3.2. To approve any voluntary dissolution and any liquidation of the Company as set forth in Article 9; and

5.3.3. To approve any additional capital contribution as set forth in Section 4.4.

5.4 VOTING OF MEMBERSHIP INTERESTS. Each Member entitled to vote on a matter shall have a vote equal to that Member's Membership Interests. Unless otherwise expressly provided by this Agreement or by nonwaivable provisions of the Act, the Members shall exercise their powers by a Majority Vote.

5.5. MEETINGS. The Company shall have annual meetings of its Members during March of each year. If all of the Members shall meet at any time and place, either within or without the State of Illinois, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting any Company action may be taken. Any Members having in the aggregate Membership Interests of at least thirty-three percent (33%) may call for a meeting of the Members to be held in Elmhurst, Illinois upon at least ten (10) days written notice delivered to the other Members. To constitute a quorum, Members holding a majority of Membership Interests of the Company must be present in person or by proxy.

5.6. INFORMAL ACTION BY MEMBERS. Any action which may be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by Members constituting Majority Vote (or such other percentage vote as would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote with respect to the subject matter were present and voted), and a copy of such consent shall be delivered promptly to the Company and to the Members not so consenting.

5.7. PROXIES. Each Member entitled to vote at a meeting of Members or to consent or dissent to Company action in writing without a meeting may authorize another Person or Persons to act for him by written proxy, but no such proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

5.8. ACCESS TO INFORMATION; RECORDS, At the requesting Member's expense, each Member has the right to obtain from the Company from time to time upon reasonable demand for any purpose reasonably related to the Member's interest as a Member:

5.8.1. Promptly after becoming available, a copy of the Company's federal, state and local income tax returns and all other tax returns deemed necessary and required for each jurisdiction in which the Company does business;

5.8.2. A current list of the name and last known business, residence or mailing addresses of the Members;

5.8.3. A copy of any written Company agreement, including this Agreement and the Company's Articles of Organization and all amendments thereto;

5.8.4. True and full information regarding the amount of cash, a description and statement of the Agreed Value of any other property contributed by each Member or which the Member has agreed to contribute in the future, and the date on which each became a Member; and

5.8.5. All of the Company's audited financial statements, to the extent the Managers determine that audited financial statements should be maintained.

5.9. RIGHT TO CONDUCT BUSINESS WITH COMPANY. Any Member or Affiliate may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for and transact other business with the Company and subject to other applicable law, has the same rights and obligations with respect to any such matter as a Person who is not a Member; provided that such transaction shall be approved by disinterested Managers in accordance with Section 3.2 and is on terms at least as favorable as could be obtained from third parties.

5.10. POWER TO COMPENSATE. The Company shall be entitled to pay compensation to any Member or Affiliate for services performed by such Member or Affiliate on behalf of the Company as long as the compensation is fair market value for services rendered.

5.11. WITHDRAWAL. No Member shall have the right to withdraw from the Company or to receive any distributions from the Company except as specifically provided in Article 8 of this Agreement.

5.12. NONCOMPETE. Each Member agrees that while he/she/it is a Member he/she/it will not, directly or indirectly, alone or in association with others, in his/her/its capacity as partner, shareholder or other legal or beneficial capacity, or otherwise, or through or in connection with any corporation, partnership or other form of business entity, without the prior written consent of the Company, own (whether by equity, debt or other means) an interest in any corporation, partnership, joint venture, sole proprietorship or other form of business entity (collectively, an "Entity") that is engaged in owning or operating an ASTC located within ten (10) miles from the principal place of business of the Company; provided, however, that this Section 5.12 shall not apply to: (a) any Member's ownership of securities that are listed on the New York Stock Exchange, the American Stock Exchange, or any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or are traded under an automated interdealer quotation system operated by the National Association of Securities Dealers; (b) EMH's ownership and operation of a hospital; or (c) any interest in an Entity operating ASTCs if such interest was acquired prior to January 28, 1997.

5.13. ACKNOWLEDGEMENT. Each Member acknowledges that he/she/it is familiar with restrictive agreements such as the one set forth in Section 5.12, has been advised by legal counsel as he/she/it deemed necessary, has concluded that his/her/its obligations and the Company's rights hereunder (including without limitation the Company's right to equitable relief as provided herein) are reasonable, and that he/she/it is fully aware of the duties, responsibilities, obligations, and liabilities imposed upon him/her/it by this Agreement.

5.14. RIGHT TO INJUNCTIVE RELIEF. In the event of a breach of any provision of Section 5.12, the Company, as it may elect, shall be entitled to an injunction restraining a Member from such conduct in addition to such other remedies as may be available to the Company for such breach.

5.15. SEVERABILITY. If a court of competent jurisdiction should declare any part of Section 5.12 unenforceable because of any unreasonable restriction of duration and/or geographical area, or for any other reason, then Members hereby acknowledge and agree that such court shall have the express authority to reform the provisions of this Agreement to provide for reasonable restrictions and/or to grant the Company such other relief at law or in equity as may be reasonably necessary to protect the interests of the Company in its business.

5.16. NO ATTORNEY-IN-FACT. Unless specifically authorized to do so by this Agreement or by the Members of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized to do so by this Agreement or by the Members to act as an agent of the Company in accordance with the previous sentence.

ARTICLE 6. INDEMNIFICATION

6.1. POWER TO INDEMNIFY. The Company shall indemnify any Person who was or is a party or is threatened to be made party to any threatened, pending or complete action, suit, proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company), by reason of the fact that he/she/it is or was a Member, Manager, Officer, employee or agent of the Company, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him/her/it in connection with such action, suit or proceeding, to the fullest extent permitted by law, but only if such Person acted in good faith and in a manner he/she/it reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his/her/its conduct was unlawful. The termination of any action, suit or proceeding by judgment or settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself create a presumption that the Person did not act in good faith and in a manner which he/she/it reasonably believed to be in or not opposed to the best interest of the Company or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his/her/its conduct was unlawful.

6.2. POWER TO INDEMNIFY IN COMPANY ACTION. The Company shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company, to procure a judgment in its favor by reason of the fact that such Person is or was a Member, Manager, officer, employee or agent of the Company, against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit to the fullest extent permitted by law, but only if such Person acted in good faith and in a manner he/she/it reasonably believed to be in, or not opposed to, the best interests of the Company, provided that no indemnification shall be made in respect of any claim, issue or matter and to which such Persons shall have been adjudged to be liable for gross negligence or misconduct in the performance of his/her/its duty to the Company, unless, and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the

adjudication of liability, but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

6.3. DETERMINATION IF INDEMNIFICATION IS PROPER.

6.3.1. Any indemnification under Sections 6.1 and 6.2 above (unless ordered by a court) shall be made by the Company only as authorized in the specific case, upon a determination that indemnification of the Member, Manager, officer, employee or agent is proper in the circumstances because he, she or it has met the applicable standard of conduct set forth in Sections 6.1 and 6.2 above. Such determination shall be made:

- (a) By the Managers, so long as no Manager was a party to such action, suit or proceeding; or
- (b) If some, but not all, Managers were a party to such action, suit or proceeding then by the Managers who are not a party to such action, suit or proceeding; or
- (c) If all Managers were a party to such action, suit or proceeding, or in any case if the Manager so directs, by independent legal counsel in a written opinion; or
- (d) In any other case, by Majority Vote.

6.3.2 Notwithstanding the foregoing, to the extent that a Member, Manager, officer, employee, or agent of the Company has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 6.1 or 6.2 above, or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

6.4. ADVANCE OF EXPENSES. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Company in advance of the final disposition of such action, suit or proceeding, as authorized by the Managers in the specific case, upon receipt of an undertaking by or on behalf of the Member, Manager, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he/she/it is entitled to be indemnified by the Company as authorized in this Article.

6.5. NON-EXCLUSIVITY. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any contract, agreement, vote of Members or disinterested Managers, or otherwise, both as to action in his/her/its official capacity and as to action in another capacity while holding such office, and shall continue as to a Person who has ceased to be a Member, Manager, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a Person.

6.6. RIGHT TO ACQUIRE INSURANCE. The Company shall have the power, at the discretion of the Managers, to purchase and maintain insurance on behalf of any Person who is or was a Member, Manager, officer, employee or agent of the Company, or who is or was serving at the request of the Company, against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of his/her/its status as such, whether or not the Company would have the power to indemnify him, her or it against such liability under the provisions of this Article.

ARTICLE 7. TRANSFERABILITY OF INTEREST; NEW MEMBERS

7.1. TRANSFERS OF MEMBERSHIP INTERESTS. No Member shall have the right as to all or any part of its Membership Interest, to:

7.1.1. Sell, assign, pledge, transfer, exchange or otherwise transfer for consideration (collectively, "sell"); or

7.1.2. Gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) such Membership Interest.

7.2. ADMISSION OF NEW MEMBERS. A Person may become a Member upon the affirmative vote of a majority of the Managers. Such Person shall become a Member upon the issuance by the Company of Membership Interests for such consideration as set forth in the approved transfer document between the Member and the Company. Any new Member's investment in the Company shall comply with all applicable laws, including but not limited to, the Illinois Health Care Worker's Self-Referral Act, 225 ILCS 47/1 *et seq* if such new Member is a physician or other individual subject to such act. In the case of a new Member who is a physician, such physician shall obtain medical staff privileges at the ASTC operated by Company prior to or concurrent with admission as a new Member. In the event that the Managers approve the admission of a new Member, and following the capital contribution by such Member EMH's Profit Interest is less than fifty percent (50%), then EMH shall have the option to contribute an equal amount of capital to purchase additional Units so that EMH maintains a Profit Interest of fifty percent (50%). EMH shall exercise its option by providing written notice to the Company within thirty (30) days from the date the Managers approve the admission of a new Member. EMH shall contribute the required capital at the same time that a new Member makes his/her/its capital contribution

7.3. RETROACTIVE ALLOCATION; CLOSING BOOKS. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Board of Managers may, at its option, at the time a Member is admitted, close the Company books (as though the Company's tax year has ended) or make *pro rata* allocations of loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Code §706(d) and the Treasury Regulations promulgated thereunder.

ARTICLE 8.
TERMINATION OF MEMBERSHIP UPON WITHDRAWAL EVENT

8.1. **TERMINATION OF MEMBERSHIP.** A Member's Membership Interest shall automatically terminate in the event of a Withdrawal Event. Upon the occurrence of a Withdrawal Event, such Member shall be entitled to a payment equal to the then current balance of the Member's Capital Account adjusted for such Member's share of the Profits and Losses of the Company for that portion of the year ending on the effective date of withdrawal; provided, however, that such amount shall be reduced by the Member's pro rata share of any loans or advances made by any other Member to the Company. Such amount shall be paid within thirty (30) days following the effective date of the Withdrawal Event. Notwithstanding the preceding sentence, in the event that a Member's withdrawal, coupled with all other, Member's withdrawals during the six (6) months immediately preceding the effective date of the Withdrawal Event, results in an aggregate withdrawal during such period of Members having Profit Interests in excess of twenty percent (20%), then the Company shall be entitled to make payments to the withdrawing Member in equal monthly amounts over a twenty-four (24) month period, with interest paid on such amounts at the twenty-four (24) month U.S. Treasury Bill rate in effect on the effective date of Withdrawal, compounded monthly.

8.2. **SATISFACTION OF LIABILITIES.** In the event of a Withdrawal Event, the withdrawing/terminating Member shall not be entitled to any distribution payment or return of capital or assets from the Company, other than in the amount of the Member's Capital Account as computed pursuant to Sections 8.1.

8.3. **FORM OF PAYMENT.** Payment to a Member of the amount in his/her/its Capital Account shall not be made unless, upon payment of all liabilities of the Company, there remains an amount sufficient to pay that Member. Return of the amount of a Member's Capital Account, irrespective of the nature of his/her/its original contribution, shall be made only in cash.

ARTICLE 9.
DISSOLUTION; LIQUIDATION

9.1. **TERM.** The Company shall continue for a period of fifty (50) years unless dissolved by:

9.1.1. Any event which makes it unlawful for the business of the Company to be carried on by Company or its Members; or

9.1.2. The affirmative vote of eighty percent (80%) of the Membership Interests;
or

9.1.3. The denial of a certificate of need permit or ambulatory surgical treatment center license.

The Members may, by Majority Vote, extend the term set forth in Section 9.1 for up to two (2) additional periods of up to ten (10) years each.

9.2. LIQUIDATION. Upon the occurrence of an event terminating the Company (which for purposes of this Section shall include the sale of substantially all of the assets), the Managers shall act, or shall appoint a Person to act, or if no Managers remain, the Members by majority vote shall appoint a Person to act, as liquidator to wind up the affairs and business of the Company. The Company's creditors shall be paid in satisfaction of the liabilities of the Company and its assets shall be distributed as soon as is practicable. The liquidator shall sell the Company's assets, except to the extent that the Members agree to the distribution of assets in kind, allocate any profits or losses from sales to the Members in accordance with their Profit Interests (taking into account the allocation of profits or losses in accordance with Section 4.6 herein above and specifically the Qualified Income Offset of Subsection 4.6.4 to the extent that the Member shall receive a liquidated distribution that causes such Member's Capital Account to be less than zero) and distribute the Company's assets, first to pay any outstanding creditors, then to the Members in accordance with the positive balances in Members' Capital Accounts.

9.3. ARTICLES OF DISSOLUTION. When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefore, and all of the remaining property and assets of the Company have been distributed, articles of dissolution shall be executed and filed with the Illinois Secretary of State as required by the Act.

9.4. EFFECT OF FILING OF ARTICLES OF DISSOLUTION. Upon the filing of articles of dissolution with the Illinois Secretary of State, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company. In no event shall any Manager or any Member conduct business on behalf of the Company after articles of dissolution have been filed with the Illinois Secretary of State.

9.5. RETURN OF CONTRIBUTION; NONRECOURSE TO OTHER MEMBERS. Except as provided by law or by separate agreement between the parties upon dissolution, each Member shall look solely to the assets of the Company for the return of its capital contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member, except as otherwise provided by law.

**ARTICLE 10.
DEFINED TERMS**

10.1. DEFINED TERMS.

10.1.1. "Act" means the Illinois Limited Liability Company Act, 805 ILCS 180.

10.1.2. "Adjusted Deficit Capital Account" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

- (a) The credit to such Capital Account of any amount which such Member is obligated to restore under §1.704-1(b)(2)(ii)(c) of the Regulations, as well as any addition thereto pursuant to the next-to-last sentences of §1.704-5(g)(1) and §1.704(i)(5) of the Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with §1.704-2(d) of the Regulations) and in the minimum gain attributable to any partner nonrecourse debt (as determined under §1.704-2(i)(3) of the Regulations); and
- (b) The debt to such Capital Account of the items described in §§1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

This definition of Adjusted Deficit Capital Account is intended to comply with the provision of §1.704-1(b)(2)(ii)(d) and §1.704-2 of the Regulations, and will be interpreted consistently with those provisions.

10.1.3. "Affiliate" means any Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a Member.

10.1.4. "Agreed Value" means, for any property, the value of such property as determined hereunder at the times or upon occurrence of the events as are set forth in this Agreement. The Agreed Value of a property shall be its fair market value as agreed to by all of the Members, but if the Members fail to agree as to the property's value, the Agreed Value shall be determined by an appraiser selected by the Managers.

10.1.5. "Agreement" means this Limited Liability Company Operating Agreement.

10.1.6. "Ambulatory Surgical Treatment Center" means any institution, place or building devoted primarily to the maintenance and operation of facilities for the performance of surgical procedures. Such facility shall not provide beds or other accommodations for the overnight stay of patients. Individual patients shall be discharged in an ambulatory condition without danger to the continued well-being of the patients or shall be transferred to a hospital.

10.1.7. "Articles of Organization" means the Articles of Organization filed on behalf of the Company with the Illinois Secretary of State in accordance with Sections 5-5 and 5-55 of the Act.

10.1.8. "Capital Account" means the account maintained for each Member on the books of the Company pursuant to Section 4.2.

10.1.9. "Class A Managers" shall mean those Managers appointed by the Members of the Company other than EMH pursuant to Section 3.1.

10.1.10. "Class B Managers" shall mean those Managers appointed by EMH pursuant to Section 3.1.

10.1.11. "Code" means the Internal Revenue Code of 1986, as amended.

10.1.12. "Company" means Elmhurst Outpatient Surgery Center, LLC, the Illinois Limited Liability Company formed pursuant to this Agreement.

10.1.13. "Fiscal Year" means the Company's accounting period for both tax and book purposes, which shall be the calendar year unless a different Fiscal Year is required by the Code.

10.1.14. "Loss" means a loss incurred by the Company, as computed pursuant to Section 4.6.

10.1.15. "Majority Vote" means the vote, consent or action of Members owning, Membership Interests exceeding one half of the Membership Interests owned by all Members entitled to vote on the matter.

10.1.16. "Manager" means each of the individuals appointed pursuant to Section 3.1 who shall have the authority to manage the Company's affairs as set forth in Article 3.

10.1.17. "Member" means each owner of an interest in the Company with full rights of participation in its management.

10.1.18. "Membership Interest" means the number of Units held by each Member

10.1.19. “Person” means any individual, general or limited partnership, limited liability company, corporation, joint venture, trust, business trust, governmental agent, cooperative, association or other entity and the trustee, heirs, executors, administrators, legal representatives, successors and assigns of such Person as the context may require.

10.1.20. “Physician Group” means a group of two (2) or more health care workers legally organized as a partnership, professional corporation, not-for-profit corporation, faculty practice plan or a similar association in which:

- (a) Each health care worker who is a member or employee or an independent contractor of the group provides substantially the full range of services that the health care worker routinely provides, including consultation, diagnosis, or treatment through the use of office space, facilities, equipment, or personnel of the group;
- (b) The services of the health care workers are provided through the group, and payments received for health services are treated as receipts of the group; and
- (c) The overhead expenses and the income from the practice are distributed by methods previously determined by the group.

10.1.21. “Profit” means the income and gain of the Company, as computed under Section 4.6.

10.1.22. “Profit Interest” means, with respect to each Member, the fraction obtained by dividing the Membership Interest by the aggregate sum of all Units outstanding. The Profit Interests of the Members are as reflected in the Company’s records.

10.1.23. “Regulations” means the United States Treasury Regulations issued pursuant to the Code.

10.1.24. “Supermajority” means the vote of a majority of Class A Managers and the unanimous vote of Class B Managers.

10.1.25. “Tax Distribution” means the distribution that may be made quarterly pursuant to Section 4.8.

10.1.26. “Tax Matters Partner” has the meaning set forth in §6231 of the Code and shall be as designated in Section 4.13.

10.1.27. "Unit" means a unit of participation in Company Profits and Losses obtained by making a capital contribution to the Company in an amount determined pursuant to Section 3.2.1 (k). Each Unit shall entitle the Member who owns such Unit to participation in the Company's Profits and Losses in an amount equal to such Member's Profit Interest.

10.1.28. "Withdrawal Event" means the bankruptcy, death, or dissolution of any Member; the voluntary withdrawal of any Member, which shall require ninety (90) days' written notice prior to the effective date; or, in the case of a Member other than EMH, the loss or resignation of medical staff privileges at the ASTC operated by the Company or the failure of a Member to comply with the Illinois Health Care Worker's Self-Referral Act, 225 ILCS 47/1 et seq., which obligation is set forth in the Medical Staff Bylaws of the Company.

ARTICLE 11. AMENDMENT

Any amendment to the Articles of Organization or this Agreement shall require the affirmative vote of Members having in excess of eighty percent (80%) of the Membership Interests. Members agree to be bound by amendments passed in such manner regardless of whether a Member voted in favor of the amendment and regardless of whether a Member executed a written amendment to the Articles of Organization or this Agreement.

ARTICLE 12. MISCELLANEOUS

12.1. NOTICE. All notices to Members shall be in writing, effective upon personal delivery or, if sent by first class certified mail, postage prepaid, addressed to the last known address in the Company's records of the Person to whom the notice is sent, upon deposit of the notice in the U.S. mails.

12.2. CHOICE OF LAW. This Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Illinois, and specifically the Act; provided, however, that the conflicts of interest laws of Illinois shall not apply to the extent that they would operate to apply the laws of another state.

12.3. FURTHER AGREEMENTS. Each Member hereby agrees to execute such further agreements and instruments and to perform such further acts as are reasonably necessary to carry out the intent of the parties hereto as expressed in this Agreement.

12.4. SEVERABILITY. If any provision hereof or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent or for any reason, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law, unless to do so would be manifestly contrary to the intent of the parties hereto as expressed in this Agreement.

12.5. SCOPE OF AGREEMENT. Each covenant, term, provision and agreement herein shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

12.6. NO WAIVER. The failure of any party to seek redress for default of or insist upon the strict performance of any covenant or condition hereof shall not constitute a waiver with respect to any subsequent act which constitutes a default hereunder. The rights and remedies provided herein are cumulative. The use of any one remedy by any party shall not preclude or waive the right to use any other remedy. The rights and remedies set forth herein are in addition to any other legal rights the parties may have.

12.7. HEADINGS. The headings are inserted for convenience only and do not define or limit the scope of this Agreement or any provision hereof.

12.8. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12.9 ENTIRE AGREEMENT. The exhibits to this Agreement are hereby incorporated in this Agreement and shall be considered a part of this Agreement as if stated herein.

IN WITNESS WHEREOF, the parties hereto have caused their signatures to be set forth below on this _____ day of _____, _____.

ELMHURST MEMORIAL HOSPITAL

By: _____

Its: _____

[Doctor Name]

EXHIBIT A

LIMITED LIABILITY COMPANY OPERATING AGREEMENT FOR ELMHURST OUTPATIENT SURGERY CENTER, LLC

OFFICERS

1. **Officers.** The officers of the Company shall consist of a Chairperson, Vice-Chairperson and Secretary/Treasurer. No person may hold any two (2) offices simultaneously. The Managers may elect such other officers as it may, from time to time, deem desirable, including, but not without limiting the generality thereof: an Assistant Secretary/Treasurer. In the event of any such offices being created, and officers being elected thereto, they shall have such duties and responsibilities as the Managers may, from time to time, prescribe or as are normally attendant upon such offices.

2. **Election.** All officers shall be elected every two (2) years by the Managers at the Annual Meeting of the Managers to serve during the ensuing two (2) years and until a successor is elected and qualified. The authority to elect a person to serve in the office of Chairperson shall rotate between the Class A Managers and Class B Managers.

3. **Vacancies.** Vacancies in any office during an officer's term may be filled by the original appointing authority. The person selected shall serve the unexpired term of the vacancy.

4. **Term of Office.** Unless otherwise determined by the Managers, the officers of the Company shall hold office following the expiration of their term until the next annual meeting of the Managers and until their successors are elected. Any officer may be removed at any time, with or without cause, by the Managers.

5. **The Chairperson.** The Chairperson shall preside at all meetings of the Managers and shall perform all such other duties as are properly required by the Managers.

6. **The Vice-Chairperson.** The Vice-Chairperson shall, in the absence or at the request of the Chairperson, perform duties and exercise the powers of the Chairperson. The Vice-Chairperson also shall have such powers and perform such duties as usually pertain to his or her office or as are properly required by the Managers.

7. **The Secretary/Treasurer and Assistant Secretary/Treasurer.** The duties of the Secretary/Treasurer shall be as follows:

- (a) Issue notice of all meetings of the Members where notices of such meetings are required by law or this Operating Agreement;
- (b) Attend all meetings of the Managers or Members and keep the minutes thereof;

- (c) Be responsible for the care and custody of all moneys and securities of the Company;
- (d) Be responsible for keeping of full and accurate accounts of all moneys received by the Company and paid by the Company;
- (e) Making and signing such reports, statements and instruments as may be required of the Secretary/Treasurer by the Managers or by the laws of the United States or of the State of Illinois; and
- (f) Performing such other duties as usually pertain to the office of Secretary/Treasurer or as are properly required by the Managers.

Actual custody and maintenance of the Company's records shall be entrusted to competent employees who shall make available all financial reports and other relevant data on day-to-day operations.

The Assistant Secretary/Treasurer, if any (or any officer), may, in the absence or disability of, or at the request of the Secretary/Treasurer, perform the duties and exercise the powers of the Secretary/Treasurer, and shall perform such other duties as the Managers shall prescribe.

8. **Officers Holding Two or More Offices.** No officer shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

9. **Duties of Officers May Be Temporarily Delegated.** In case of the absence of any officer, or for any other reason that the Managers may deem sufficient, the Managers may delegate, for the time being, the powers or duties of any officer to any other officer, or to any Manager.

10. **Compensation.** Pursuant to Section 3.2.1(b) of the Agreement, the Managers, in their sole discretion, may fix such reasonable compensation for the officers of the Company as deemed appropriate. The officers shall be reimbursed for any reasonable expenses which they may incur on behalf of the Company in the conduct of its affairs, provided that the personnel employed by the Company and authorized by the Managers to discharge the functions of a corporate office may receive reasonable compensation for their services in a manner determined by the Members.

Exhibit E

**Elmhurst Outpatient Surgery Center, LLC
Limited Liability Company Operating Agreement
Vote to Amend**

**OFFICIAL BALLOT
May 5, 2016**

The Elmhurst Outpatient Surgery Center Board of Managers has recommended changes to the Amended and Restated Limited Liability Company Operating Agreement of Elmhurst Outpatient Surgery Center, LLC dated March 24th 2008. The changes recommended are attached and titled:

**Elmhurst Outpatient Surgery Center, LLC
Operating Agreement Terms
April 25, 2016**

VOTE: YES to adopt the above term sheet changes into a newly Amended and Restated Limited Liability Company Operating

NO to the recommended changes

To achieve results, your vote will be weighted by the membership interest you own once your ballot has been returned.

Your Name: _____

Your Signature: _____

Date: _____

Please note that your vote will be kept confidential. Your name is required only to determine the membership interest that you own in order to properly weight votes and to ensure duplicate submissions are not received. Only original signature documents will be accepted.

Return this ballot to Christopher Burrow

1200 S York Road, Suite 1400

Elmhurst, IL 60126

via mail or in person no later than:

May 23, 2016

cburrow@eosc.org or 331.221.4602