



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
Office of Health Care Access

April 22, 2013

IN THE MATTER OF:

An Application for a Certificate of Need
filed Pursuant to Section 19a-638, C.G.S. by: Notice of Agreed Settlement
Office of Health Care Access
Docket Number: 12-31772-CON

**Diagnostic Endoscopy Center, LLC and
AmSurg Corp.**

To:

Stuart Waldstreicher, M.D.
Member
Diagnsotic Endoscopy Center, LLC
778 Long Ridge Road
Stamford, CT 06902

Robert McCullough
Vice President, Development
AmSurg Corp.
20 Burton Hills Boulevard
Suite 500
Nashville, TN 37215-6105

Dear Dr. Waldstreicher and Mr. McCullough:

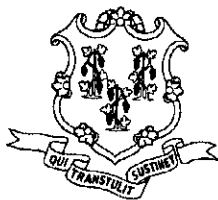
This letter will serve as notice of the approved Certificate of Need Application in the above-referenced matter. On April 17, 2013, the Agreed Settlement, attached hereto, was adopted and issued as an Order by the Department of Health, Office of Health Care Access.

A handwritten signature in cursive script that reads "Kimberly Martone (SL)".

Kimberly R. Martone
Director of Operations

Enclosure
KRM:sl

An Equal Opportunity Provider
(If you require aid/accommodation to participate fully and fairly, contact us either by phone, fax or email)
410 Capitol Ave., MS#13HCA, P.O.Box 340308, Hartford, CT 06134-0308
Telephone: (860) 418-7001 Fax: (860) 418-7053 Email: OHCA@ct.gov



Office of Health Care Access Certificate of Need Application

Agreed Settlement

Applicants: Diagnostic Endoscopy Center, LLC
778 Long Ridge Road, Stamford, CT 06902
AmSurg Corp. through its wholly owned subsidiary
AmSurg Holdings, Inc.
20 Burton Hills Blvd., Suite 500, Nashville, TN 37215

Docket Number: 12-31772-CON

Project Title: Change of Ownership of Diagnostic Endoscopy Center,
LLC

Project Description: Diagnostic Endoscopy, LLC and AmSurg Corp through its wholly owned subsidiary AmSurg Holdings, Inc. (herein together referred to as “Applicants”) propose the change of ownership of Diagnostic Endoscopy, LLC. As a result of this proposal, AmSurg Holdings, Inc. will acquire a 62% ownership interest in Diagnostic Endoscopy, LLC. The remaining 38% ownership interest will remain with the physician members of Diagnostic Endoscopy, LLC. AmSurg Corp and AmSurg Holdings, Inc. are collectively referred to herein as “AmSurg.”

Procedural History: On October 26, 2012, the Office of Health Care Access (“OHCA”) received a Certificate of Need (“CON”) application from the Applicants for the above-referenced project. A notice to the public concerning OHCA’s receipt of the Applicant’s intent to file the application with OHCA was published on May 30, 31 and June 1, 2012 in *The Advocate* (Stamford).

OHCA’s authority to review, approve, modify, or deny this proposal is established by Connecticut General Statutes § 19a-639. The provisions of this section, as well as the principles and guidelines set forth in Connecticut General Statutes § 19a-637, were fully considered by OHCA in its review.

FINDINGS OF FACT

1. Diagnostic Endoscopy, LLC is an outpatient endoscopy facility that provides gastroenterology and colonoscopy procedures. Ex. A, p. 9.
2. On June 29, 1999, OHCA determined that Diagnostic Endoscopy, LLC (at that time known as Stamford Endoscopy Center) did not require a CON to establish the endoscopy service/center. OHCA CON Determination, 99-W.
3. On August 31, 2004, OHCA concluded that pursuant to Public Act 04-249, Diagnostic Endoscopy, LLC (then known as Diagnostic Endoscopy Center) had provided evidence that it was in operation prior to July 1, 2003 and, consequently, was exempt from the need to obtain CON authorization. OHCA CON Determination, 04-30109-DTR.
4. Diagnostic Endoscopy, LLC's current ownership is comprised of eight (8) gastroenterology specialists ("Physician Owners"). Ex. A, p. 8.
5. AmSurg Corp currently operates over 220 centers in 35 states across the United States and has over 1,500 physician partners. Ex. A, p. 11.
6. Under the proposed change of ownership, AmSurg Holdings, Inc. will obtain a sixty-two percent (62%) ownership interest in Diagnostic Endoscopy, LLC. The remaining thirty-eight percent (38%) ownership interest will remain with the physician members. Ex. A, p. 8.
7. AmSurg provides a wide range of management and support services for both established and newly-developed surgical centers with particular expertise in managed care contracting, information system development and accounting. Ex. A, p. 8.
8. The change of ownership will not result in any change in scope of services or licensure category. Ex. A, p. 8.
9. The decision for this change in ownership was developed jointly by the current physician owners and DEC Merritt, LLC. DEC Merritt, LLC currently provides management services to the Center. Ex. A, p. 8.
10. AmSurg was chosen by the current owners of Diagnostic Endoscopy, LLC for the following reasons: (a) proven ability to improve management and operations; (b) expertise in the clinical and administrative quality improvement; (c) contracting capabilities; and (d) financial resources, expertise and strength. Ex. A, p. 9.
11. AmSurg offers expertise in the areas of quality improvement, collection and analysis of data; benchmarking analysis comparing quality outcomes to industry standards; up-to-date policy and procedures manuals that meet regulatory and

- accreditation requirements; clinical experts who conduct periodic assessments and provide hands-on support for quality and risk management initiatives; specialty specific initiatives, including programs regarding infection control, patient safety and quality improvement; and clinical regulatory and accreditation educational programs. Ex. C, pp. 102-103.
12. This proposal, through AmSurg's expertise in centralized support services and maintaining efficient administrative practices, will produce immediate operating cost reductions. Ex. A, p. 9.
 13. Streamlined administration and management of Diagnostic Endoscopy, LLC will allow the physicians to focus on providing patient care and quality services. Ex. A, p. 9.
 14. The efficiencies anticipated due to this proposal will be critical to the performance of Diagnostic Endoscopy, LLC since the Applicants anticipate the cost of providing high quality patient care to increase in the near future due to quality improvements to ensure patient satisfaction, technological advances, development of electronic health records and information systems and healthcare reform. Ex. A, pp. 9&10.
 15. Diagnostic Endoscopy, LLC anticipates AmSurg's quality initiative will provide a systematic approach to planning, measuring, evaluating and improving safety and quality of care. Ex. A, pp. 9&10.
 16. AmSurg has significant resources in the areas of materials management, information systems, managed care contracting, planning and development, and expense management. Ex. C, p. 103.
 17. Diagnostic Endoscopy, LLC will benefit from AmSurg's contracting expertise in the areas of payers, purchasing and leasing. Ex. A, p. 10.
 18. AmSurg's involvement in Diagnostic Endoscopy, LLC's ownership and operations will provide it with leadership and financial support. AmSurg currently carries an over \$450 million line of credit. Ex. A, p. 10.
 19. AmSurg's ownership will not only make the capital available and necessary to implement enhancements to Diagnostic Endoscopy, LLC, but as a national management company, AmSurg will institute financial controls, risk management strategies and economies of scale into Diagnostic Endoscopy, LLC's purchasing and supply arrangements that will reduce the cost of patient services and provide Diagnostic Endoscopy, LLC with long-term financial viability. Ex. A, p. 10.
 20. AmSurg's financial strength will ensure the viability of the Center and thus continued access to more cost efficient gastroenterology outpatient procedures in the service area. Ex. A, p. 10.

21. Diagnostic Endoscopy, LLC unanimously approved the sale of 62% ownership interest to AmSurg Holdings, Inc. at the Board meeting on May 7, 2012. Ex. A, p. 12 & Attachment C.

22. Diagnostic Endoscopy, LLC's historical procedure utilization is as follows:

Table 1: Diagnostic Endoscopy, LLC's Historical Utilization Growth

Year	# of Procedures	Annual Growth
2008	4,552	-
2009	8,469	86%*
2011	8,840	4%
2012 (Year to date)	9,800	11%**

*Growth related to new physician owners.

**Growth related to new non-owner physicians.

Ex. C, p. 105.

23. Diagnostic Endoscopy, LLC's projected procedure utilization is as follows:

Table 2: Diagnostic Endoscopy, LLC's Projected Utilization Growth

Year	# of Procedures	Annual Growth
2012 (projected)	10,290	5%
2013	10,599	3%
2014	10,917	3%
2015	11,244	3%

Notes:

2012 growth based on historical and additional non-owner physicians owners.

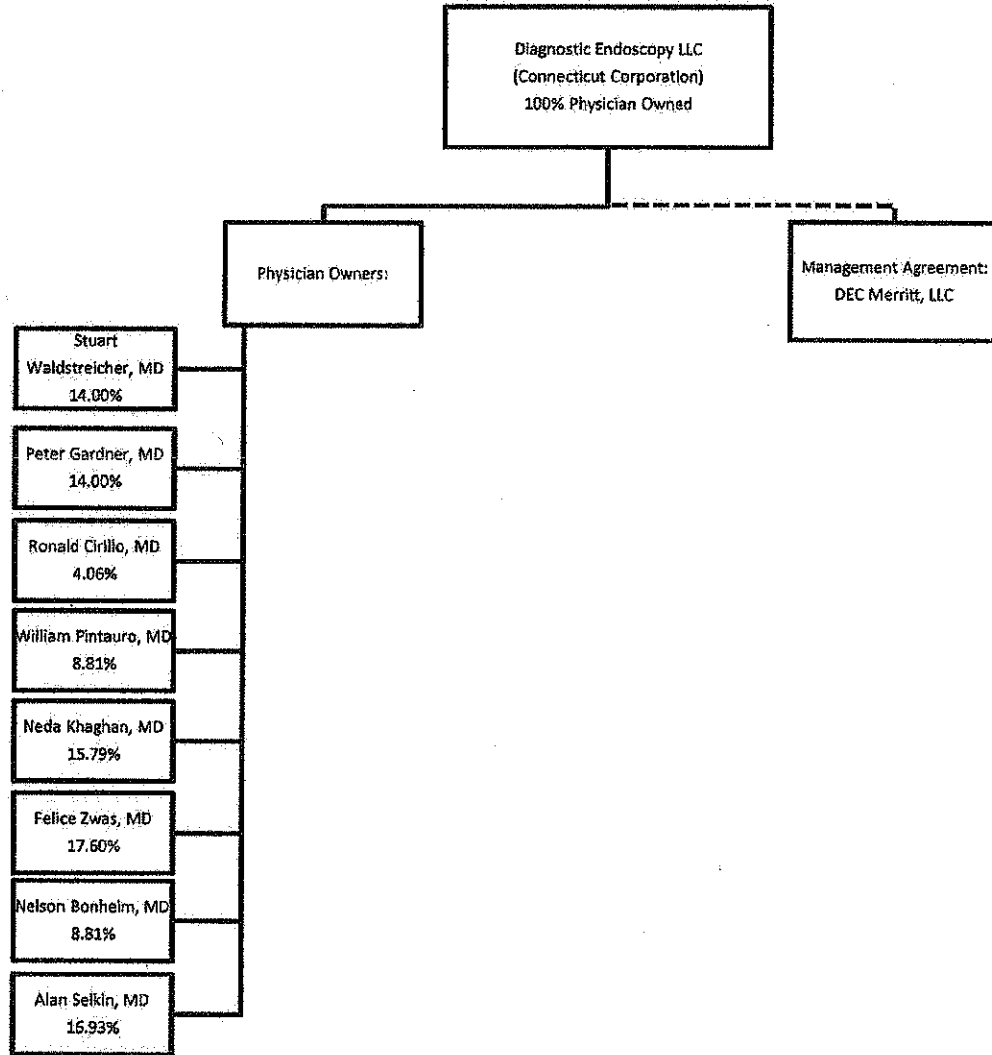
2013-2015 is based solely on historical growth.

Ex. C, p. 105.

24. The proposed transaction will result in the termination of the management agreement with DEC Merritt, LLC. Prior to closing, the Center will merge into a Tennessee LLC and at the closing, AmSurg Holdings, Inc. will become a member of that Tennessee LLC. Ex. A, p. 13.

25. The following is Diagnostic Endoscopy, LLC's current corporate organization structure:

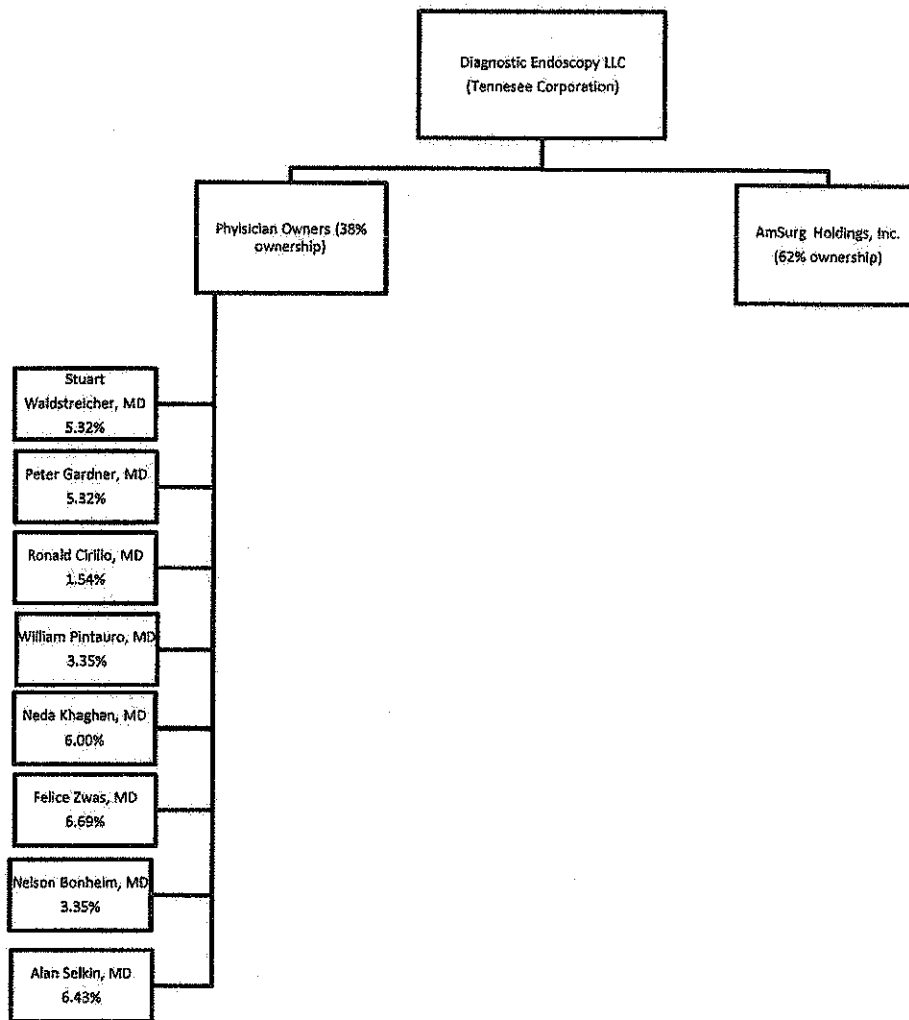
Organizational Chart of Diagnostic Endoscopy Pre-Transaction



Ex. A, pp. 43-36.

26. The following represents Diagnostic Endoscopy, LLC's proposed corporate organization chart:

Organizational Chart of Diagnostic Endoscopy Post-Transaction



Ex. A, pp. 43-36.

27. The follow table illustrates the Pre and Post-transaction ownership of the Center:

Table 3: Center's Pre- and Post-Transaction Ownership

Seller's name	Pre-Trans. Membership Int.	Membership Interest Transfer	Post Trans. Membership Int.
DEC Merritt, LLC	0.0%	0.0%	0.0%
Stuart Waldesteicher, M.D.	14.00%	(8.98)%	5.32%
Peter Gardner, M.D.	14.00%	(8.68)%	5.32%
Ronald Cirillo, M.D.	4.06%	(2.52)%	1.54%
William Pintauro, M.D.	8.81%	(5.46)%	3.35%
Neda Khagan, M.D.	15.79%	(9.79)%	6.00%
Felice Zwas, M.D.	17.60%	(10.91)%	6.69%
Nelson Bonheim, M.D.	8.81%	(5.46)%	3.35%
Alan Selkin, M.D.	16.93%	(10.51)%	6.43%
AmSurg Holdings, Inc.	0.00%	62.00%	62.00%
Total	100%		

Ex. A, p. 37, Attachment F.

28. The Operating Agreement of Diagnostic Endoscopy, LLC will provide that "No provision of this Agreement shall limit the independent medical judgment of any practicing physician with staff privileges at the Center with regard to the providing of patient care." Ex. C, p. 143
29. The total capital expenditure associated with this proposal is not more than \$12,583,950, which represents the purchase price that AmSurg Holdings, Inc. will pay the existing owners for purchasing 62% ownership interest in Diagnostic Endoscopy, LLC. Ex. A, p. 16.
30. Although AmSurg has an over \$450 million line of credit, it will use its existing working capital to fund the purchase price. Ex. A, p. 16.

31. The current and the projected payer mix for Diagnostic Endoscopy, LLC is as follows:

Table 4: Payer Mix by Imaging Service

Payer Description:	FY 2011	FY 2012	FY 2013	FY 2014
Medicare	27.73%	28.73%	29.73%	30.73%
Medicaid	0.03%	0.03%	0.03%	0.03%
CHAMPUS & TriCare	0.04%	0.04%	0.04%	0.04%
Total Government	27.79%	28.79%	29.79%	30.79%
Commercial	71.79%	70.79%	69.79%	68.79%
Uninsured	0.42%	0.42%	0.42%	0.42%
Workers Comp	0.0%	0.0%	0.0%	0.0%
Total Non-Government	72.21%	71.21%	70.21%	69.21%
Total	100%	100%	100%	100%

Ex. A, pp. 16-17.

32. The Applicants project the following incremental revenues and expenses for Diagnostic Endoscopy, LLC with the proposed project:

Table 5: Projected Incremental Revenues and Expenses

Description:	FY 2013	FY 2014	FY 2015
Revenues from Operations	\$5,742,220	\$5,914,487	\$6,091,922
Total Operation Expense	\$3,025,385	\$3,086,164	\$3,156,263
Net Income	\$2,716,835	\$2,828,343	\$2,935,659

Ex. A, p. 68.

33. The assumptions used to formulate the projections include 5% growth in revenue and procedures due to an additional physician utilizer, 3% annual growth in revenue and procedures in 2013 and 2014 and 3% annual growth in expenses. These percentages are based on Diagnostic Endoscopy, LLC's historical experiences. Ex. A, pp. 17, 68-71.
34. The Applicants assert that this proposal is cost effective because freestanding outpatient surgery centers are less costly for patients and payers due to efficiencies in the operation and administration, economies of scale with vendors and other costs that will be realized. Ex. A, p. 18.
35. The cost savings assume a proposed 10% reduction in Professional/Contracted Services, a 20% reduction in Supplies/Drugs, and a 15% reduction in Other Expenses for each of the 3 projected years. Ex. A, pp. 17, 68-71.

36. The cost savings are based on AmSurg's previous experience with the facilities it currently operates nationally and its ability to reduce operating costs. The cost savings will be achieved specifically through national contracting for supplies and drugs, in-house legal and accounting services, favorable medical waste and linen/laundry contracting, operating efficiencies in information technology and software technology, national contracting for insurance coverage and favorable office supplies contracting and efficiencies. Ex. C, p. 103.
37. This proposal will improve the financial strength of the state's healthcare system by: (1) leveraging existing payer contracts, increasing utilization and achieving operating cost reductions; (2) improving patient satisfaction with increased efficiency in administrative support and upgrade in information system development; and (3) enabling patients' greater access to outpatient services through procurement of contracts with additional health plans. Further, the Center has a Financial Hardship Policy in which it provides reduced fees to certain qualifying patients. The Financial Hardship Policy will remain in place after the transaction. AmSurg's financial management and tax expertise will also have a positive impact upon the financial performance of the Center which in turn will improve the financial health of the State's health care system. Ex. A, p. 16.
38. OHCA is currently in the process of establishing its policies and standards as regulations. Therefore, OHCA has not made any findings as to this proposal's relationship to any regulations adopted by OHCA. (Conn. Gen. Stat. § 19a-639(a)(1))
39. OHCA recently published a statewide facilities and services plan. Since the plan was not in circulation at the time the Applicants filed the instant CON application, OHCA has not made any findings as to this proposal's relationship to the plan. (Conn. Gen. Stat. § 19a-639(a)(2))
40. The Applicants have satisfactorily demonstrated that there is a clear public need for the proposal. (Conn. Gen. Stat. § 19a-639(a)(3)).
41. The Applicants have satisfactorily demonstrated that the proposal is financially feasible given the operational cost savings expected to be realized by the proposal. (Conn. Gen. Stat. § 19a-639(a)(4)).
42. The Applicants have satisfactorily demonstrated that the proposal would maintain accessibility of health care delivery in the region and satisfactorily demonstrated an improvement in quality and cost effectiveness. (Conn. Gen. Stat. § 19a-639(a)(5)).
43. The Applicants have shown that there would be no significant change to the provision of health care services to the relevant populations and payer mix. (Conn. Gen. Stat. § 19a-639(a)(6)).

44. The Applicants have satisfactorily identified the population to be served by the proposal and satisfactorily demonstrated that said population has a need as proposed. (Conn. Gen. Stat. § 19a-639(a)(7))
45. The historical utilization in the service area supports this proposal. (Conn. Gen. Stat. § 19a-639(a)(8)).
46. The Applicants have satisfactorily demonstrated that their proposal would not result in an unnecessary duplication of existing services in the area. (Conn. Gen. Stat. § 19a-639(a)(9)).

Discussion

CON applications are decided on a case by case basis and do not lend themselves to general applicability due to the uniqueness of the facts in each case. In rendering its decision, OHCA considers the factors set forth in Connecticut General Statutes § 19a-639(a). The Applicants bear the burden of proof in this matter by a preponderance of the evidence. *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008).

Diagnostic Endoscopy, LLC is an outpatient endoscopy facility that provides gastroenterology and colonoscopy procedures. In 1999, OHCA determined that Diagnostic Endoscopy, LLC (at that time known as Stamford Endoscopy Center) did not require a CON to establish the endoscopy service/center. Additionally, on August 31, 2004, OHCA concluded that pursuant to Public Act 04-249, Diagnostic Endoscopy, LLC (then known as Diagnostic Endoscopy Center) provided evidence that it was in operation prior to July 1, 2003 and, consequently, was exempt from the need to obtain CON authorization. FF1-3. Diagnostic Endoscopy, LLC's current ownership is comprised of eight (8) gastroenterology specialists who are the Physician Owners. FF4.

AmSurg, currently operates over 220 centers in 35 states across the United States, including two (2) in Connecticut, and has over 1,500 physician partners. FF5&7. AmSurg provides a wide range of management and support services for both established and newly-developed surgical centers with particular expertise in managed care contracting, information system development and accounting. FF7.

As part of this proposal, AmSurg Holdings, Inc. will obtain a sixty-two percent (62%) ownership interest in Diagnostic Endoscopy, LLC. The remaining thirty-eight percent (38%) ownership interest will remain with the physician members. FF6. The proposed change in ownership will not result in any change in scope of services or licensure category for Diagnostic Endoscopy, LLC. FF9. The decision for the proposed change in ownership was developed jointly by the current physician owners and DEC Merritt, LLC, the company that currently provides management services to Diagnostic Endoscopy, LLC. FF9. AmSurg was chosen by the current owners of Diagnostic Endoscopy, LLC for the following reasons: (a) proven ability to improve management and operations; (b) expertise in clinical and administrative quality improvement; (c) contracting capabilities; and (d) financial resources, expertise and strength. FF10.

AmSurg's national experience offers expertise in the areas of quality improvement, collection and analysis data; benchmarking analysis comparing the Diagnostic Endoscopy, LLC's quality outcomes to industry standards; up to date policies and procedures manuals that meet regulatory and accreditations requirements; clinical experts who conduct periodic assessments and provide hands-on support for quality and risk management initiatives; specialty specific initiatives, including programs regarding infection control, patient safety and quality improvement; and clinical regulatory and accreditation educational programs. FF11.

It is expected that AmSurg's expertise in centralized support services and maintaining efficient administrative practices will produce immediate operating cost reductions. FF12. The efficiencies anticipated due to this proposal will be critical to the performance of Diagnostic Endoscopy, LLC since the Applicants anticipate the cost of providing high quality patient care to increase in the near future due to quality improvement and patient satisfaction, advances in technology, development of electronic health records and information systems and health care reform. FF14. Diagnostic Endoscopy, LLC anticipates that AmSurg's quality initiative will provide a systematic approach to planning, measuring, evaluating and improving safety and quality of care. FF15. As a result of the streamlined administration and management of Diagnostic Endoscopy, LLC, the physicians will be able to focus on providing quality patient care and services. FF13.

Additionally, Diagnostic Endoscopy, LLC will benefit from AmSurg's contracting expertise in the areas of payers, purchasing and leasing. AmSurg will facilitate contract negotiations with new payers because of AmSurg's national market presence in the healthcare provider community. FF17. Finally, AmSurg's involvement in the ownership and operations of Diagnostic Endoscopy, LLC will provide leadership and financial support. Even though AmSurg currently carries an over \$450 million line of credit, it will use its existing working capital to fund the not more than \$12,583,950 purchase price. FF30.

AmSurg's ownership will make capital available to implement necessary enhancements to Diagnostic Endoscopy, LLC, and as a national management company, it will institute financial controls, risk management strategies and economies of scale into Diagnostic Endoscopy, LLC's purchasing and supply arrangements that will reduce the cost of patient services and provide Diagnostic Endoscopy, LLC with long-term financial viability. FF19. The cost savings related to this proposal include a 10% reduction in Professional/Contracted Services, a 20% reduction in Supplies/Drugs, and a 15% reduction in Other Expenses for each of the 3 projected years. FF35.

AmSurg's financial strength will also ensure continued access to more cost efficient gastroenterology outpatient procedures in the service area. FF20. These cost savings are based on AmSurg's national historical experience with similar facilities and its ability to reduce operating costs. The cost savings will be achieved specifically through national contracting for supplies and drugs, in house legal and accounting services, favorable medical waste and linen/laundry contracting, operating efficiencies in information technology and software technology, national contracting for insurance coverage and favorable office supply contracting and efficiencies. FF36.

The Operating Agreement of Diagnostic Endoscopy, LLC will provide that: "No provision of this Agreement shall limit the independent medical judgment of any practicing physician with staff privileges at the Center with regard to the providing of patient care." FF28. In order to ensure that the practicing physicians remain free from any corporate influence upon their medical judgments, OHCA requires that the Applicants agree to take certain actions as stated in the Order attached hereto.

ORDER

NOW, THEREFORE, the Department of Public Health, Office of Health Care Access, Diagnostic Endoscopy Center, LLC and AmSurg hereby stipulate and agree to the terms of settlement with respect to the change of ownership of Diagnostic Endoscopy Center, LLC, as follows:


1. AmSurg and Diagnostic Endoscopy, LLC shall ensure that the Center's Medical Director and any and all physicians utilizing the Center are free from any and all influence from AmSurg or Diagnostic Endoscopy, LLC with respect to their independent medical judgment in providing direct care to patients of the Center.
2. AmSurg and Diagnostic Endoscopy, LLC shall ensure that the Center's Medical Director and any and all physicians utilizing the Center are free from any and all influence with respect to their supervision of any and all licensed health care workers providing direct care to patients of the Center.
3. AmSurg and Diagnostic Endoscopy, LLC shall ensure that the Operating Agreement among the Physician Owners and AmSurg Holdings, Inc. contains a provision providing for the independent medical judgment of their Medical Director and physicians utilizing the Center.
4. AmSurg and Diagnostic Endoscopy, LLC shall provide the Office of Health Care Access with a fully executed copy of the Operating Agreement, relating to the Center, within 30 days of execution in order to evidence compliance with Paragraph 3.
5. AmSurg and Diagnostic Endoscopy, LLC shall provide the Office of Health Care Access with a fully executed copy of the Operating Agreement, as referenced on pages 105 and 137 through 171 of the Application and as subsequently revised, within 30 days of execution.
6. The Office of Health Care Access, Diagnostic Endoscopy Center, LLC and AmSurg agree that this Agreed Settlement represents a final agreement between the Office of Health Care Access, Diagnostic Endoscopy Center, LLC and AmSurg with respect to Docket No. 12-31772-CON. The execution of this Agreed Settlement resolves all objections, claims and disputes, which may have been raised by Diagnostic Endoscopy Center, LLC and AmSurg with regard to Docket Number 12-31772-CON.
7. This Agreed Settlement is an order of the Office of Health Care Access with all the rights and obligations attendant thereto, and the Office of Health Care

Access may enforce this Agreed Settlement under the provisions of Conn. Gen. Stat. §§ 19a-642 and 19a-653 with all fees and costs of such enforcement being the responsibility of Diagnostic Endoscopy Center, LLC and AmSurg.

8. This Agreed Settlement shall be binding upon Diagnostic Endoscopy Center, LLC, AmSurg, and their successors and assigns.

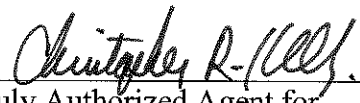
Signed by STUART WALDSTREICHER, BOARD MEMBER
(Print name) (Title)

4/18/2013
Date



Duly Authorized Agent for
Diagnostic Endoscopy Center, LLC

Signed by Christopher R. Kelly, Vice President
(Print name) (Title)

4/18/2013
Date


Duly Authorized Agent for
AmSurg Holdings, Inc.

The above Agreed Settlement is hereby accepted and so ordered by the Department of Public Health Office of Health Care Access on April 22, 2013.


Lisa A. Davis, MBA, BSN, RN
OHCA Commissioner