

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

April 23, 2014

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: 13-31841-CON

**Connecticut Eye Surgery Center South,
LLC and AmSurg Holdings, Inc.**

**Proposal to Change the Ownership
Structure of Connecticut Eye Surgery
Center South, LLC, in Milford**

To:

Samuel P. Sprotzer, M.D.
Medical Director
Connecticut Eye Surgery Center South, LLC
60 Wellington Road
Milford, CT 06460

Robert M. McCullough
Vice President
AmSurg Holdings, Inc.
20 Burton Hills Boulevard
Nashville, TN 37215

Dear Dr. Sprotzer and Mr. McCullough:

This letter will serve as notice of the approved Certificate of Need Application in the above-referenced matter. On April 23, 2014, the Agreed Settlement, attached hereto, was adopted and issued as an Order by the Department of Public Health, Office of Health Care Access.

Kimberly R. Martone
Director of Operations

Enclosure
KRM:jah



**Department of Public Health
Office of Health Care Access
Certificate of Need Application**

Agreed Settlement

Applicants: Connecticut Eye Surgery Center South, LLC
60 Wellington Road, Milford, CT 06460; and
AmSurg Holdings, Inc.
20 Burton Hills Boulevard, Nashville, TN 37215

Docket Number: 13-31841-CON

Project Title: Proposal to Change the Ownership Structure of
Connecticut Eye Surgery Center South, LLC

Project Description: Connecticut Eye Surgery Center South, LLC, (“Center”), an ophthalmic outpatient surgical facility in Milford, is currently owned by its 21-physician members with a combined 51% ownership interest and AmSurg Holdings, Inc. with a 49% ownership interest. The physician members of the Center and AmSurg Holdings, Inc., hereinafter collectively referred to as the “Applicants,” propose a change in the ownership structure of the Center. As a result of the proposal, AmSurg Holdings, Inc. will acquire an additional 2% ownership interest in the Center, thereby increasing its ownership interest from a 49% to a 51% ownership interest. The remaining 49% ownership interest will remain with the physician members of the Center. The transfer of the 2% membership interest will give AmSurg Holdings, Inc. a majority ownership interest in the Center.

Procedural History: The Applicants published notice of their intent to file the Certificate of Need (“CON”) application in the *New Haven Register* on March 21, 22, and 23, 2013. On May 23, 2013, the Office of Health Care Access (“OHCA”) received the CON application from the Applicants for the above-referenced project and deemed the application complete on August 26, 2013. OHCA received no responses from the public concerning the Applicants’ proposal and no hearing requests were received from the public pursuant to Connecticut General Statutes (“Conn. Gen. Stat.”) § 19a-639a(e). Deputy Commissioner Davis considered the entire record in this matter.

To the extent the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc., v. S & H Computer Systems, Inc.*, 605 F.Supp. 816 (Md. Tenn. 1985).

Findings of Fact and Conclusions of Law

1. The Center is a licensed outpatient surgical facility providing ophthalmic surgical procedures at 60 Wellington Road in Milford, Connecticut. Exhibit A, pp. 8 & 103.
2. AmSurg Holdings, Inc. (“AmSurg”) is a wholly owned subsidiary of AmSurg Corporation. AmSurg Corporation operates over 240 ambulatory surgery centers in 35 states and provides a wide range of management and support services. AmSurg Corporation has specific expertise in managed care contracting, information system development and accounting services for both established and newly-developed surgical centers. Exhibit C, pp. 158, 162 & 163.
3. On December 1, 2012, AmSurg purchased a 49% minority ownership interest in the Center. The physician members of the Center collectively retained a 51% majority ownership interest. Exhibit A, pp. 8 & 9.
4. The Applicants’ current proposal involves a transfer of ownership interests from the physician members to AmSurg, whereby AmSurg will acquire an additional 2% ownership interest in the Center. The proposed transaction will result in AmSurg possessing a 51% majority ownership interest in the Center and the physician members collectively retaining a 49% minority ownership interest in the Center. Exhibit A, pp. 8 & 22.
5. The two organizational charts that follow illustrate the corporate structure of the Center before (Chart 1) and after (Chart 2) the proposed ownership interest transfer. Exhibit A, pp. 18 & 19.

Chart 1:

Connecticut Eye Surgery Center South Organizational Chart – Before Proposed Transfer

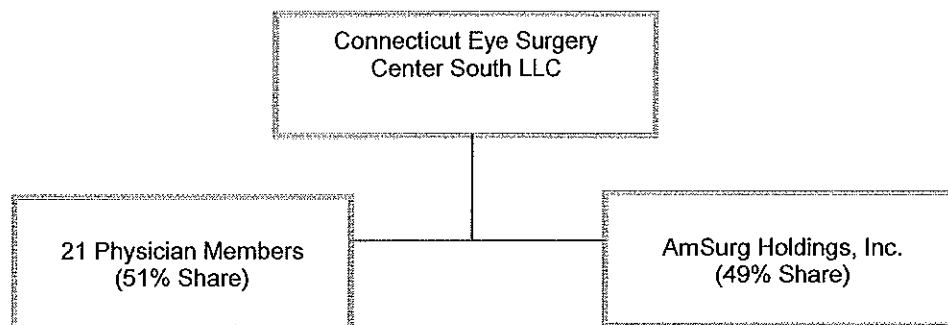
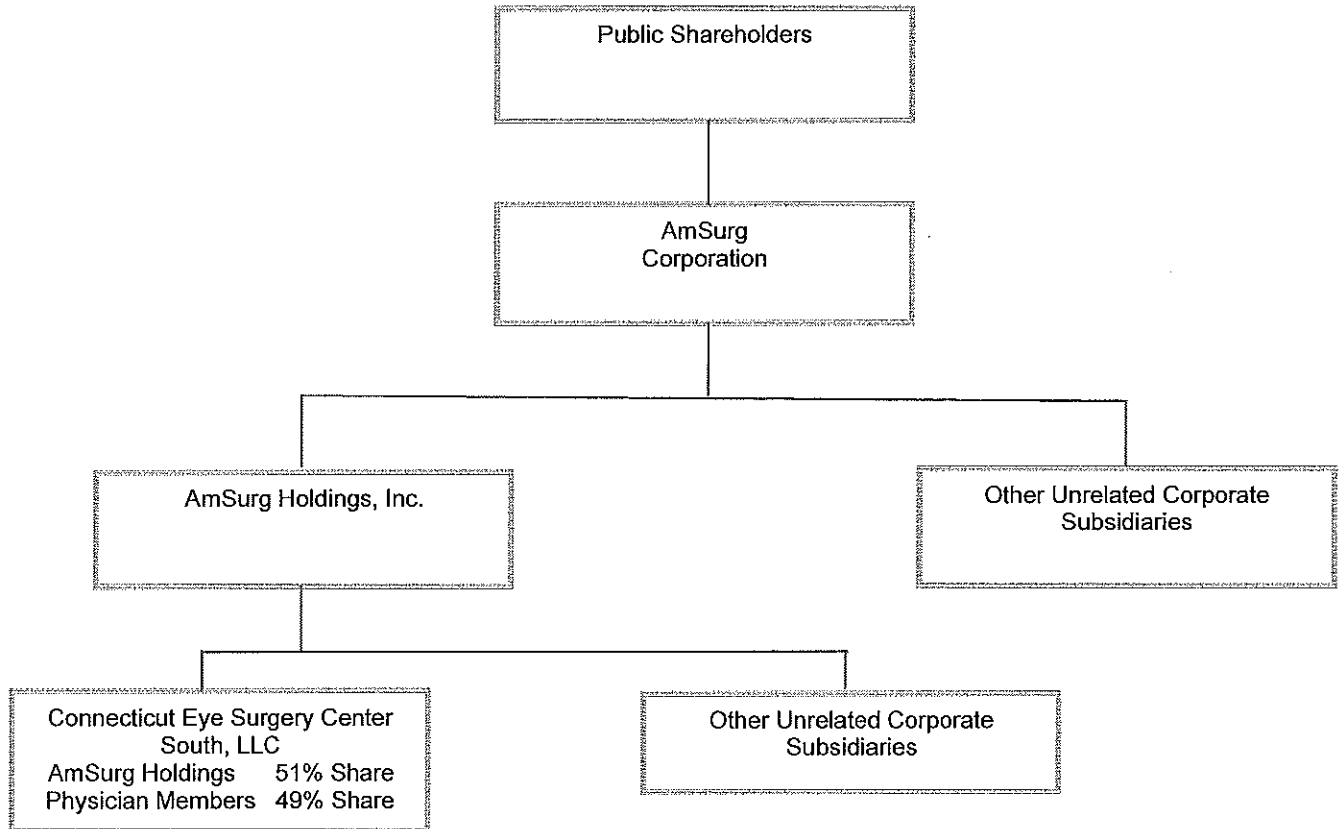


Chart 2:
Connecticut Eye Surgery Center South Organizational Chart – After Proposed Transfer



6. The proposed reorganization is being initiated to facilitate a change in the ownership structure that is consistent with AmSurg's other affiliated ambulatory surgery centers and will not affect or alter any terms of the Center's operation. Exhibit A, pp. 8 & 10.
7. Allowing for the transfer of the additional 2% ownership interest to AmSurg will enable AmSurg to take certain actions on behalf of the Center as its major equity owner, and to fully leverage the benefit of its national contracts with equipment and supply vendors for the benefit of the Center. Exhibit C, pp. 157 & 158.
8. Pursuant to the Federal Sherman Antitrust Act and Conn. Gen. Stat. § 35-24 et seq., there exist limitations on the actions AmSurg can take on behalf of the Center unless AmSurg holds a controlling ownership interest in the Center. Under both Federal and Connecticut statutes, entities not under common control cannot coordinate their negotiation of prices or payment terms with purchasers of their services, but entities under common control can coordinate such activities. Exhibit C, p. 157; Exhibit D, pp. 271 & 272; Conn. Gen. Stat. § 35-24 et seq.

9. The Center currently serves the town of Milford as well as its adjacent towns: Orange, Stratford, Shelton and West Haven. With respect to the proposal, the Center's service area will remain the same and the Center will continue to operate in the space it currently leases. Exhibit A, p. 9.
10. The proposed change in ownership structure will not result in any change in the scope of services provided, service volumes or patient population mix for the Center. Exhibit A, pp. 8 & 9.
11. The governance of the Center will continue to be controlled by the Center's Board of Managers. The proposed transfer of the 2% ownership interest will not affect the governance or controlling body of the Center. Exhibit C, pp. 158 & 159.
12. AmSurg will not influence the Center's Medical Director or the physicians utilizing the Center with respect to their independent medical judgment in providing direct patient care to the Center's patients. The Center's current Operating Agreement provides, and the proposed Operating Agreement will continue to 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." Exhibit A, pp. 9, 44 & 76.
13. The proposed ownership interest transfer will allow the Center to:
 - a. Streamline the corporate administration of the Center, consistent with AmSurg's other affiliated ambulatory surgery centers;
 - b. Promote optimum integration of the Center's operations with the expertise of AmSurg (e.g., information and support systems);
 - c. Promote the cost effectiveness of facility operations by utilizing contractual arrangements that AmSurg will be negotiating requiring the Center to be a majority owned subsidiary of AmSurg; and
 - d. Position the Center more favorably in negotiations with third party payers. Exhibit A, p. 8; Exhibit C, pp. 157 & 158.
14. The Center has performed an average of 7,125 ophthalmic surgical procedures annually for fiscal years ("FYs") 2010 through 2012, with a 1% annual increase in volume:

Table 1: Actual Utilization, FY 2010-2012

Description	Actual FY 2010	Actual FY 2011	Actual FY 2012
Procedures Performed	7,054	7,125	7,197
% Change between FYs	-	1%	1%

FY is from Oct 1 through September 30.

Exhibit D, p. 274.

15. The Center is projecting similar growth in the number of procedures for FYs 2013 through 2015:

Table 2: Projected Utilization, FY 2013-2015

Description	Projected FY 2013	Projected FY 2014	Projected FY 2015
Procedures Performed	7,269	7,342	7,415
% Change between FYs	1%	1%	1%

Note: Projected procedure volumes are based upon the Center's actual historical results. Exhibit A, p. 13.

16. The Center reported \$2.7 million in income from operations for FY 2012. The projected income and incremental expense reductions from operations for the Center with the proposal for FYs 2013 through 2015 is as follows:

Table 3: Actual & Projected Operating Results with the Proposal for FYs 2012 - 2015

Description	Actual FY 2012	Projected FY 2013	Projected FY 2014	Projected FY 2015
Net Patient Revenue:				
Non-Government	\$4,337,150	\$4,380,522	\$4,424,327	\$4,468,570
Medicare	\$2,710,933	\$2,738,042	\$2,765,422	\$2,793,076
Medicaid	\$212,243	\$214,366	\$216,509	\$218,674
Revenue from Operations	\$7,260,326	\$7,332,930	\$7,406,258	\$7,480,320
Total Operating Expenses	\$4,514,772	\$4,627,641	\$4,743,332	\$4,861,916
Income from Operations	\$2,745,554	\$2,705,289	\$2,662,926	\$2,618,404

Exhibit A, p.14; Exhibit H, p. 2.

Table 4: Incremental Expense Reductions from Operations

	FY 2013	FY 2014	FY 2015
Professional/Contracted Services	(\$13,433)	(\$13,769)	(\$14,113)
Supplies and Drugs	(\$99,523)	(\$102,011)	(\$104,561)
Other Operating Expenses	(\$28,044)	(\$28,745)	(\$29,464)
Total Operating Expense Adjustments	(\$141,000)	(\$144,525)	(\$148,138)

*Operating expenses also includes salaries and fringe benefits, bad debt, depreciation, interest expense and lease expense required to operate the Center. These expenses are not affected by the proposed interest transfer. The Applicants assume 1% annual growth in net patient service revenue and surgical procedures performed; 2.5% annual growth in expenses; and no change in the number of full time equivalents necessary to staff the Center. The percentage increases are based on the actual results of the Center.

Exhibit H, p. 2.

17. Based upon AmSurg's prior experiences, the Center can achieve cost savings of 2.5% in Professional/Contracted Services, a 5% in Supplies/Drugs, and 5% in Other Expenses compared to the expenses the Center would incur without being able to fully capitalize on AmSurg's management expertise. Exhibit H, p. 2.
18. The cost savings are based on AmSurg's previous experience with the surgical 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, accounting and marketing 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. Exhibit F, p. 2.

19. The total capital expenditure for the proposal is \$417,695, which represents the fair market value consideration for the membership interest that AmSurg will pay physician members for the additional 2% ownership interest in the Center. AmSurg will use working capital to fund the purchase price. Exhibit A, pp. 8 & 12.
20. The current and projected payer mix is based upon established Center operations and is not projected to change as a result of this proposal.

Table 5: The Current and Projected Payer Mix

Description	FY 2012 Current Payer Mix	FY 2013 Projected Payer Mix	FY 2014 Projected Payer Mix	FY 2015 Projected Payer Mix
Medicare*	59.12%	59.13%	59.13%	59.12%
Medicaid*	2.32%	2.32%	2.32%	2.32%
CHAMPUS & TriCare	0.07%	0.07%	0.07%	0.07%
Total Government	61.51%	61.52%	61.51%	61.51%
Commercial Insurers*	37.97%	37.97%	37.97%	37.98%
Uninsured	0.49%	0.48%	0.49%	0.49%
Workers Compensation	0.03%	0.03%	0.03%	0.03%
Total Non-Government	38.49%	38.48%	38.49%	38.49%
Total Patients	100.00%	100.00%	100.00%	100.00%

Note: * Includes managed care activity.
 Exhibit A, p. 13.

21. 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)).
22. This CON application is consistent with the overall goals of the Statewide Health Care Facilities and Services Plan. (Conn. Gen. Stat. § 19a-639(a)(2)).
23. The Applicants have satisfactorily demonstrated that there is a clear public need for the proposal. (Conn. Gen. Stat. § 19a-639(a)(3)).
24. The Applicants have satisfactorily demonstrated that the proposal is financially feasible given the Center's actual and projected revenues and expenses and the cost reductions expected to be realized by the proposal. (Conn. Gen. Stat. § 19a-639(a)(4)).
25. The Applicants have satisfactorily demonstrated that their proposal would maintain accessibility of health care delivery in the region and satisfactorily demonstrates a potential improvement in quality and cost effectiveness. (Conn. Gen. Stat. § 19a-639(a)(5)).
26. The Applicants have shown that there would be no change to the provision of health care services to the relevant patient populations and payer mix. (Conn. Gen. Stat. § 19a-639(a)(6)).

27. The Applicants have satisfactorily identified the population being served by the proposal and have satisfactorily demonstrated that said population has a need as proposed. (Conn. Gen. Stat. § 19a-639(a)(7)).
28. The Applicants' historical provision of surgical procedures in the area supports this proposal. (Conn. Gen. Stat. § 19a-639(a)(8)).
29. 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. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727 (2013).

The Center is an outpatient surgical facility in Milford, Connecticut that provides ophthalmic surgical procedures. *FF1*. AmSurg Corporation provides a wide range of management and support services for both established and newly-developed surgical centers throughout the country. *FF2*. In 2012, AmSurg Corporation, through its wholly-owned subsidiary AmSurg, purchased a 49% ownership interest in the Center. *FF 3*. Currently, the ownership composition of the Center consists of 21 physician members collectively owning a 51% majority ownership interest and AmSurg owning a 49% minority ownership interest. *FF3&5*. The Applicants' proposal involves a transfer of ownership interest from the physician members to AmSurg, whereby, AmSurg will obtain an additional 2% ownership interest in the Center, resulting in AmSurg holding a 51% majority ownership interest. A 49% ownership interest will remain with the 21 physician members of the Center. *FF4&5*. The reorganization is being initiated to facilitate governance consistent with AmSurg's other affiliated ambulatory surgery centers and to realize cost efficiencies associated therewith. The proposal will not affect or alter any terms of the Center's operation. *FF6,9,10&11*.

After attaining a 49% ownership interest in 2012, AmSurg began introducing enhancements to the Center's operations by providing administrative and management oversight services; introducing accounting and financial reporting services; and integrating AmSurg's and the Center's information and support services. *Exhibit A, pp. 10 & 11; Exhibit C, p. 158*. Allowing for the transfer of an additional 2% ownership interest in the Center will enable AmSurg to take certain actions on behalf of the Center in order to reduce its operating costs; actions that are prohibited under state and Federal antitrust laws under the current ownership structure of the Center. In order for AmSurg to be in compliance with state and federal antitrust laws, and thereby realize operational savings for the Center, it must hold a majority ownership interest in the Center. *FF7&8*.

The cost savings related to this proposal include 2.5% in "Professional/Contracted Services", 5% in "Supplies/Drugs", and 5% in "Other Expenses" compared to the expenses the Center would incur without being able to fully implement AmSurg's management expertise by way of this proposal. *FF16&17*. The cost savings are based on AmSurg's previous experience with the surgical facilities it currently operates nationally and its ability to reduce operating costs. More specifically, the cost savings will be achieved through national contracting for supplies and drugs, in-house legal, accounting and marketing 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. *FF18*.

This proposal will allow AmSurg to further streamline the corporate administration of the Center; to promote optimum integration of the Center's operations with the expertise of AmSurg; and to fully leverage the benefit of its national contracts with supply vendors and the purchasing and leasing of equipment for the benefit of the Center. In addition, AmSurg will take advantage of its national market presence during its contract negotiations with new commercial healthcare payers. *FF13.*

The proposed change in ownership structure will not result in any change in scope of services provided, service volumes, patient population mix or licensure category for the Center. *FF10&20.* Also, the proposed transfer will not affect the governance or controlling body of the Center, which will continue to be controlled by the Center's Board of Managers. *FF11.*

Overall, the cost savings achieved by this proposal will enhance the financial strength of the health care system in Connecticut while ensuring that access to quality care is maintained for the population currently being served by the Center, including that of the Medicare and Medicaid population. As a result, the Applicant's have demonstrated that their proposal is consistent with the overall goals included in the Statewide Health Care Facilities and Services Plan.

Moreover, neither AmSurg nor the Center will influence the Center's Medical Director or the physicians utilizing the Center with respect to their independent medical judgment in providing direct patient care to the patients of the Center. Specifically, the Center's current operating agreement provides, and the proposed operating agreement will continue to provide, that nothing contained in the operating agreement shall limit the independent medical judgment of any practicing physician with staff privileges at the Center with regard to the provision of patient care. *FF12.* In order to ensure that the practicing physicians remain free from any corporate influence upon their medical judgment, 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, Connecticut Eye Surgery Center South, LLC and AmSurg Holdings, Inc. hereby stipulate and agree to the terms of settlement with respect to the change in ownership structure of Connecticut Eye Surgery Center South as follows:

1. Connecticut Eye Surgery Center South, LLC and AmSurg Holdings, Inc. shall ensure that the Center's Medical Director and any and all physicians utilizing the Center are free from any and all influence from Connecticut Eye Surgery Center South, LLC and AmSurg Holdings, Inc. with respect to their independent medical judgment in providing direct care to patients of the Connecticut Eye Surgery Center South, LLC.
2. Connecticut Eye Surgery Center South, LLC and AmSurg Holdings, Inc. 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 Connecticut Eye Surgery Center South, LLC.
3. Connecticut Eye Surgery Center South, LLC and AmSurg Holdings, Inc. 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 Connecticut Eye Surgery Center South, LLC.
4. Connecticut Eye Surgery Center South, LLC and AmSurg Holdings, Inc. 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.
5. The Office of Health Care Access, Connecticut Eye Surgery Center South, LLC and AmSurg Holdings, Inc. agree that this Agreed Settlement represents a final agreement between the Office of Health Care Access, Connecticut Eye Surgery Center South, LLC and AmSurg Holdings, Inc. with respect to this request. The signing of this Agreed Settlement resolves all objections, claims and disputes that may have been raised by the Connecticut Eye Surgery Center South, LLC and AmSurg Holdings, Inc. with regard to Docket Number: 13-31841-CON.
6. 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 pursuant to the provisions of Conn. Gen. Stat. §§ 19a-642 and 19a-653 with all fees and costs of such enforcement being the responsibility of Connecticut Eye Surgery Center South, LLC and AmSurg Holdings, Inc. should Connecticut Eye Surgery Center South, LLC or AmSurg Holdings, Inc. fail to comply with its terms.

7. This Agreed Settlement shall inure to the benefit of and be binding upon the Office of Health Care Access, Connecticut Eye Surgery Center South, LLC, AmSurg Holdings, Inc., and their successors and assigns.

Signed by JEFFREY KAPLAN MD MEMBER
(Print name) (Title)

4/20/14
Date

[Signature]
Duly Authorized Agent for
Connecticut Eye Surgery Center South, LLC

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

April 15, 2014
Date

Christopher R. Kelly
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, 2014.

[Signature]
Lisa A. Davis, MBA, BSN, RN
Deputy Commissioner