

## Greer, Leslie

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**From:** Martone, Kim  
**Sent:** Wednesday, May 30, 2012 3:45 PM  
**To:** Lazarus, Steven; Greer, Leslie  
**Subject:** FW: Diagnostic Endoscopy LLC /AMSURG, Corp (Legal Notice of CON Application published)  
**Attachments:** OrderConf.pdf

Kimberly R. Martone  
Director of Operations  
Office of Health Care Access  
860-418-7029

---

**From:** Bettyanne Toole [<mailto:bettyanne@bvmlaw.com>]  
**Sent:** Wednesday, May 30, 2012 3:38 PM  
**To:** Martone, Kim  
**Cc:** Michele AOL  
**Subject:** Diagnostic Endoscopy LLC /AMSURG, Corp (Legal Notice of CON Application published)

Dear Kim: Just as a courtesy, we want to provide you with the attached confirmation of publishing from The Advocate. The Applicants, Diagnostic Endoscopy LLC and AMSURG Corp., are publishing notice in The Advocate of their intent to file a Certificate of Need application seeking approval for the transfer of ownership of the ASC located at 778 Long Ridge Road in Stamford from Diagnostic Endoscopy LLC to AMSURG, Corp. The Legal Notice began running today and will run through Friday (May 30-June 1).

Of course, please let us know if you have any questions.

Thank you,  
Betty Anne

Betty Anne Toole-Teasley  
Paralegal  
Bershtein, Volpe & McKeon P.C.  
105 Court Street, 3rd Floor  
New Haven, Connecticut 06511-6957  
Telephone: (203) 777-5800 (ext. 104)  
Facsimile: (203) 777-5806

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**From:** Housey, SaRan [<mailto:legal.notices@scni.com>]

**Sent:** Tuesday, May 29, 2012 4:54 PM

**To:** Bettyanne Toole

**Subject:** 1769252

# Order Confirmation

<b><u>Ad Order Number</u></b> 0001769252	<b><u>Customer</u></b> BERSHTEIN, VOLPE & MCKEON P.C.	<b><u>Payor Customer</u></b> BERSHTEIN, VOLPE & MCKEON P.C.
<b><u>Sales Rep.</u></b> shousey	<b><u>Customer Account</u></b> 210653	<b><u>Payor Account</u></b> 210653
<b><u>Order Taker</u></b> shousey	<b><u>Customer Address</u></b> 105 COURT STREET,3RD FLOOR NEW HAVEN CT 06511-6957 USA	<b><u>Payor Address</u></b> 105 COURT STREET,3RD FLOOR NEW HAVEN CT 06511-6957 USA
<b><u>Ordered By</u></b> BETTY	<b><u>Customer Phone</u></b> 203-777-5800	<b><u>Payor Phone</u></b> 203-777-5800
<b><u>Order Source</u></b> E-mail		
<b><u>PO Number</u></b>	<b><u>Customer Fax</u></b>	<b><u>Customer EMail</u></b> bettyanne@bvmlaw.com

## Ad Content Proof

### PUBLIC NOTICE

The Applicants, Diagnostic Endoscopy LLC and AMSURG Corp., are applying for a Certificate of Need pursuant to Section 19a-638 of the Connecticut General Statutes. The application seeks approval for the transfer of ownership of the ambulatory surgical center located at 778 Long Ridge Road, Stamford, Connecticut from Diagnostic Endoscopy LLC to AMSURG Corp. The total capital expenditure for the project is \$13,833,950.00.

<b><u>Tear Sheets</u></b>	<b><u>Proofs</u></b>	<b><u>Affidavits</u></b>	<b><u>Special Pricing</u></b>	<b><u>Promo Type</u></b>
0	0	0	None	

**Order Notes:**

**Invoice Text:**

<b><u>Blind Box</u></b>	<b><u>Materials</u></b>	<b><u>Payment Method</u></b>		
<b><u>Net Amount</u></b>	<b><u>Tax Amount</u></b>	<b><u>Total Amount</u></b>	<b><u>Payment Amt</u></b>	<b><u>Amount Due</u></b>
\$119.96	\$0.00	\$119.96	\$0.00	\$119.96

<b><u>Ad Number</u></b>	<b><u>Ad Type</u></b>	<b><u>Ad Size</u></b>	<b><u>Pick Up Number</u></b>
0001769252-01	Legal Liners	1.0 X 18 Li	

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<b><u>Color</u></b>	<b><u>Production Method</u></b>	<b><u>Production Notes</u></b>
<NONE>	AdBooker	

<b><u>Product</u></b>	<b><u>Placement/Class</u></b>	<b><u># Inserts</u></b>	<b><u>Cost</u></b>
<b><u>Run Dates</u></b>			
<b><u>Sort Text</u></b>			
<b><u>Run Schedule Invoice Text</u></b>			
Stamford Advocate:: 5/30/2012, 5/31/2012, 6/1/2012 PUBLICNOTICETHEAPPLICANTS Public Notice The Applicants, Diagnostic Endoscopy LLC and AMSUR	Public Notices	3	\$99.96
stamfordadvocate.com:: 5/30/2012, 5/31/2012, 6/1/2012 PUBLICNOTICETHEAPPLICANTS Public Notice The Applicants, Diagnostic Endoscopy LLC and AMSUR	Public Notices	3	\$20.00

**BERSHTEIN, VOLPE & McKEON P.C.**

ATTORNEYS AT LAW

105 COURT STREET, THIRD FLOOR

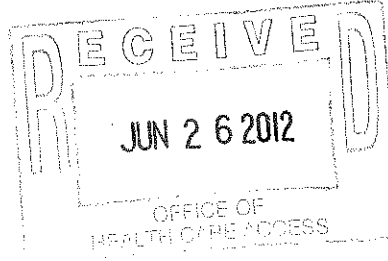
NEW HAVEN, CONNECTICUT 06511

203-777-5800

Fax: 203-777-5806

Michele M. Volpe  
Direct Dial (203) 777-6995

June 26, 2012  
Via Hand Delivery



Kimberly R. Martone  
Director of Operations  
State of Connecticut  
Office of Health Care Access  
410 Capitol Avenue, MS#13HCA  
Hartford, Connecticut 06134-0308

Re: Certificate of Need Application – Change of Ownership  
Applicants: Diagnostic Endoscopy LLC and AmSurg Corp.

Dear Ms. Martone:

Enclosed please find the original Certificate of Need Application for the change of ownership of Diagnostic Endoscopy LLC located at 778 Long Ridge Road in Stamford, Connecticut. Also enclosed are four (4) copies of the application and a CD of the scanned application and documents in MS format.

I look forward to working with you and your staff during the review process.

Please do not hesitate to contact me if you have any questions or require additional information.

Thank you.

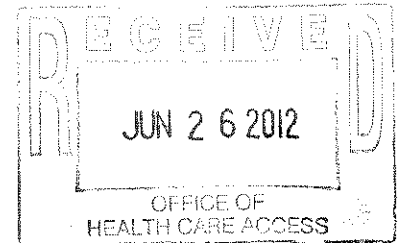
Very truly yours,

  
Michele M. Volpe

MMV/bt  
Enclosures

S:\doc\12 5701-5750\125728 DEC (CON re AmSurg Transaction)\Ltr to OHCA (Transmitting CON Application 6.26.12).doc

## Application Checklist



### Instructions:

1. Please check each box below, as appropriate; and
2. The completed checklist *must* be submitted as the first page of the CON application.

- Attached is the CON application filing fee in the form of a certified, cashier or business check made out to the "Treasurer State of Connecticut" in the amount of \$500.

### For OHCA Use Only:

Docket No.: 12-31772-CON Check No.: 10473  
OHCA Verified by: [Signature] Date: 6/26/12

- Attached is evidence demonstrating that public notice has been published in a suitable newspaper that relates to the location of the proposal, 3 days in a row, at least 20 days prior to the submission of the CON application to OHCA. (OHCA requests that the Applicant fax a courtesy copy to OHCA (860) 428-7053, at the time of the publication)

- Attached is a paginated hard copy of the CON application including a completed affidavit, signed and notarized by the appropriate individuals.

- Attached are completed Financial Attachments I and II.

- Submission includes one (1) original and four (4) hard copies with each set placed in 3-ring binders.

**Note:** A CON application may be filed with OHCA electronically through email, if the total number of pages submitted is 50 pages or less. In this case, the CON Application must be emailed to [ohca@ct.gov](mailto:ohca@ct.gov).

**Important:** For CON applications (less than 50 pages) filed electronically through email, the signed affidavit and the check in the amount of \$500 must be delivered to OHCA in hardcopy.

- The following have been submitted on a CD
1. A scanned copy of each submission in its entirety, including all attachments in Adobe (.pdf) format.
  2. An electronic copy of the documents in MS Word and MS Excel as appropriate.

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# AFFIDAVIT

## AFFIDAVIT

Applicant: Diagnostic Endoscopy LLC

Project Title: Change of Ownership – Diagnostic Endoscopy LLC

I, Stuart Waldstreicher, Member  
(Individual's Name) (Position Title – CEO or CFO)

of Diagnostic Endoscopy LLC being duly sworn, depose and state that  
(Hospital or Facility Name)

Diagnostic Endoscopy LLC's information submitted in this Certificate of  
(Hospital or Facility Name)

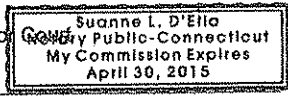
Need Application is accurate and correct to the best of my knowledge.

[Signature] 6/19/12  
Signature Date

Subscribed and sworn to before me on 6/19/12

Suanne L. D'Elia

Notary Public/Commissioner of Superior Court



My commission expires: \_\_\_\_\_

# AFFIDAVIT

## AFFIDAVIT

Applicant: AmSurg Corp., through its wholly owned subsidiary, AmSurg Holdings, Inc.

Project Title: Change of Ownership – Diagnostic Endoscopy LLC

I, Billie A. Payne, President, AmSurg Holdings, Inc.  
(Individual's Name) (Position Title – CEO or CFO)

of AmSurg Holdings, Inc. being duly sworn, depose and state that  
(Hospital or Facility Name)

AmSurg Holdings, Inc. information submitted in this Certificate of  
(Hospital or Facility Name)

Need Application is accurate and correct to the best of my knowledge.

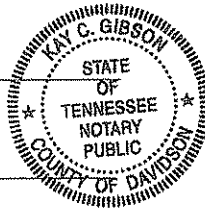
Billie A. Payne  
Signature

6-20-12  
Date

Subscribed and sworn to before me on June 20, 2012


Kay C. Gibson  
Notary Public/Commissioner of Superior Court

My commission expires: May 3, 2016





Copy of Filing Fee Check

<b>DIAGNOSTIC ENDOSCOPY, L.L.C.</b> 77B LONG RIDGE ROAD STAMFORD, CT 06902 (203) 322-2400		<b>WEBSTER BANK, NA</b> 61-70102111	<b>10473</b>
PAY TO THE ORDER OF <u>Treasurer State of CT</u>			6/19/2012
Five Hundred and 00/100		\$ **500.00	DOLLARS
Treasurer State of CT			
MEMO			
⑈010473⑈ ⑆221170101⑆10 0010221794⑈			

DIAGNOSTIC ENDOSCOPY, L.L.C.  
Treasurer State of CT.

CON Application June 2012

6/19/2012

10473  
500.00

Copy of Public Notice

# The ADVOCATE

BERSHTEIN, VOLPE & MCKEON P.C.  
105 COURT STREET, 3RD FLOOR  
NEW HAVEN CT 06511-6957

THE ADVOCATE  
9 Riverbend Drive South  
Building 9A  
P.O. Box 4910  
Stamford, CT 06907-0910  
Telephone: 203-330-6208  
Fax: 203-384-1158  
Legal.notices@scni.com

**PUBLIC NOTICE**  
The Applicants, Diagnostic Endoscopy LLC and AMSURG Corp, are applying for a Certificate of Need pursuant to Section 19a-638 of the Connecticut General Statutes. The application seeks approval for the transfer of ownership of the ambulatory surgical center located at 778 Long Ridge Road, Stamford, Connecticut from Diagnostic Endoscopy LLC to AMSURG Corp. The total capital expenditure for the project is \$18,833,950.00.

THE ADVOCATE  
CERTIFICATE OF PUBLICATION

I, Debra O'Hansey  
Being duly sworn, depose and say that I am a Representative in the employ of SOUTHERN CONNECTICUT NEWSPAPERS, INC., Publisher of *The Advocate* and *Greenwich Time*, that a LEGAL NOTICE as stated below was published in THE ADVOCATE.

Subscribed and sworn to before me on this 13th Day of June, A.D. 2012.

Pamela E. Caluori  
Pamela Caluori/Notary Public

My commission expires on January 2013

PO Number

<u>Publication</u>	<u>Ad Number</u>	<u>Ad Caption</u>
Stamford Advocate	0001769252-01	Public Notice The Applicants, D

Publication Schedule  
5/30/2012, 5/31/2012, 6/1/2012



## State of Connecticut Office of Health Care Access Certificate of Need Application

**Instructions:** Please complete all sections of the Certificate of Need (“CON”) application. If any section or question is not relevant to your project, a response of “Not Applicable” may be deemed an acceptable answer. If there is more than one applicant, identify the name and all contact information for each applicant. OHCA will assign a Docket Number to the CON application once the application is received by OHCA.

<b>Docket Number:</b>	TBD	
<b>Applicant:</b>	Diagnostic Endoscopy Center LLC	AmSurg Corp., through its wholly owned subsidiary AmSurg Holdings, Inc.
<b>Contact Person:</b>	Stuart Waldstreicher, M.D.	Robert McCullough
<b>Contact Person’s Title:</b>	Member	Vice President, Development
<b>Contact Person’s Address:</b>	778 Long Ridge Road Stamford, CT 06902	20 Burton Hills Boulevard Suite 500 Nashville, TN 37215-6105
<b>Contact Person’s Phone:</b>	(203) 322-2400	(615) 665-3533
<b>Contact Person’s Fax Number:</b>	(203) 329-8855	(615) 665-0755
<b>Contact Person’s Email Address:</b>	Swmd@aol.com	RMcCullough@amsurg.com
<b>Project Town:</b>	Stamford, CT	
<b>Project Name:</b>	Change of Ownership – Diagnostic Endoscopy Center LLC	
<b>Statute Reference:</b>	Section 19a-638, C.G.S.	
<b>Estimated Total Capital Expenditure:</b>	\$12,583,950	

## 1. Project Description and Need: Change of Ownership or Control

### a. Please provide a narrative detailing the proposal.

**RESPONSE:** Applicants Diagnostic Endoscopy LLC (“Diagnostic Endoscopy”) and AmSurg Corp., through its wholly owned subsidiary AmSurg Holdings, Inc. (collectively, with its parent company, “AmSurg”) request Certificate of Need approval from the Office of Health Care Access (“OHCA”) to undertake a change of ownership of the licensed single specialty ambulatory surgical center owned and operated by Diagnostic Endoscopy in Stamford, Connecticut (the “Center”). AmSurg will obtain 62% ownership interest in Diagnostic Endoscopy and commence management of the Center pending approval of this Application.

The Center is an outpatient endoscopy facility that provides gastroenterology and colonoscopy procedures as noted in OHCA Docket No. 08-31203-DTR. The Center was established in 1999 and has been in existence for approximately twelve (12) years. OHCA found Diagnostic Endoscopy did not have to submit to the Certificate of Need Process pursuant to Certificate of Need Report 99-W and Docket Numbers 03-30109-DTR and 04-30109-DTR.

The current ownership of Diagnostic Endoscopy is comprised of eight gastroenterology specialists (the “Physician Owners”), all of whom perform gastroenterology procedures at the Center. The Center occupies a facility of approximately 6,800 square feet with 4 procedure rooms. The Center operates Monday through Friday 6:30 AM to 5 PM and Saturdays by appointment. The Center is staffed by 27 employees consisting of 17 full time equivalents. The Center is presently accredited by the Accreditation Association of Ambulatory Health Care (AAAHC). DEC Merritt, LLC (“Merritt”) provides management services to Diagnostic Endoscopy. Merritt is a privately-held development and management company and is distinct from the physician members in Diagnostic Endoscopy.

Under the proposed change of ownership, AmSurg will obtain a 62% interest in Diagnostic Endoscopy for \$12,583,950 less an amount equal to 62% of outstanding debt at the time of closing. The purchase price includes a payment of \$1.25 million to Merritt to terminate Merritt’s management agreement with Diagnostic Endoscopy. The remaining thirty-eight percent (38%) interest in Diagnostic Endoscopy will remain with the Physician Owners. Prior to closing, Diagnostic Endoscopy will merge, as permitted under Connecticut law, into a Tennessee limited liability company. At the closing, AmSurg will become a member of the Tennessee LLC.

The change of ownership will not result in a change in the scope of services or licensure category for the Center and the Center will continue to bill for facility fees. The proposed change of ownership will allow the Center to continue to

provide area residents with access to high quality and cost effective ambulatory surgical procedures in a non-hospital based setting.

The parties intend to finalize this transaction immediately upon approval of this Application.

- b. Explain how each Applicant determined need for the proposal and discuss the benefits of this proposal for each Applicant (discuss each Applicant separately in separate paragraphs).**

**RESPONSE:**

**Diagnostic Endoscopy** – Diagnostic Endoscopy desires to collaborate with AmSurg in the provision of high quality healthcare management and operations. AmSurg will provide Diagnostic Endoscopy with the capabilities and reach of a national manager and operator of ambulatory surgical centers that has extensive experience partnering with physicians and surgical centers. Diagnostic Endoscopy's decision to accept AmSurg's proposal is made jointly by the Physician Owners and Merritt for the following reasons: (1) AmSurg's proven ability to improve management and operations; (2) AmSurg's expertise in clinical and administrative quality improvement; (3) AmSurg's contracting capabilities and (4) AmSurg's financial resources, expertise and strength.

First, AmSurg's expertise in centralizing support services and maintaining efficient administrative practices will produce immediate operating cost reductions. Streamlined administration and management of Diagnostic Endoscopy will allow the physicians to focus on providing patient care and quality services. AmSurg provides its affiliates with access to valuable infrastructure and a wide range of management and operational services including managed care contracting, information systems development, human resources, marketing, purchasing, regulatory compliance, maintenance of licenses, billing and revenue collection, expense management, survey readiness and emergency preparedness, financial negotiation and budget preparation. Partnering with AmSurg will provide patients of Diagnostic Endoscopy with enhanced quality and efficiency because of the expertise of the national manager and ability to draw on benchmarks of similar centers. Together with the Physician Owners, AmSurg will provide patients of Diagnostic Endoscopy with greater efficient access to gastroenterology services. Because the cost of providing high quality patient care will increase in the near future due to, among other initiatives, improving quality and patient satisfaction, technology advances, development of electronic health records and information systems and healthcare reform, AmSurg's efficiencies are critical to the performance of Diagnostic Endoscopy.

Second, Diagnostic Endoscopy recognizes that AmSurg's quality improvement initiatives will provide a systematic approach to planning, measuring, evaluating and improving safety and quality of care. Partnering with AmSurg will also

ensure that Diagnostic Endoscopy has the financial ability and organization support to keep up with the demanding and expensive requirements of the health care system. One hallmark of AmSurg is its high priority on quality improvement initiatives through the establishment of various benchmarking measures for its affiliated surgical centers. Benchmark data is gathered from all AmSurg facilities and is utilized to provide each facility with focused studies and comparative statistics. In addition to the benchmarking, AmSurg develops best practices for its centers to improve clinical outcomes. These initiatives include monitoring patient transfers and patient satisfaction levels, infection control programs, and return to operating room/emergency room measures. These initiatives are expected to further enhance Diagnostic Endoscopy's reputation. Diagnostic Endoscopy will also benefit by increased awareness of performance standards by being able to benchmark and track Diagnostic Endoscopy's performance against other AmSurg facilities. AmSurg also offers education and training through its human resource teams.

Third, Diagnostic Endoscopy acknowledges that it will benefit from AmSurg's contracting expertise in the areas of payers, purchasing and leasing. AmSurg will facilitate the Center's procurement of contracts with additional payers because of AmSurg's brand recognition and market presence in the healthcare provider community. Diagnostic Endoscopy's retention of any additional payer contracts will improve access for more patients by allowing more patients to avail themselves of the lower cost services that freestanding ambulatory surgical centers provide. AmSurg will also assist with renegotiation of reimbursement rates with existing payers. AmSurg will also help Diagnostic Endoscopy with coordination of purchases and leases through its team of contract reviewers and negotiators and its utilization analysis expertise. AmSurg's established vendor relationships will also benefit Diagnostic Endoscopy. Coupled with administrative and management efficiencies, AmSurg's administration of new and renegotiated payer contracts and management of other contracting issues will enhance the ability of the Physician Owners to fully utilize the Center as an extension of their medical practices and achieve trickle-down savings for patients.

Finally, Diagnostic Endoscopy recognizes the involvement of AmSurg in the ownership and operations of Diagnostic Endoscopy will provide the Center with the leadership and financial support of a successful healthcare organization. AmSurg currently carries a \$450 million line of credit and has been a publicly held company since 1997. AmSurg's ownership will not only make available the capital necessary to implement enhancements to the Center, but as a national management company AmSurg will institute proven financial controls, risk management strategies and economies of scale into the Center's purchasing and supply arrangements that will reduce the cost of patient services and provide the Center with long-term viability. AmSurg's financial strength will ensure the viability of the Center and thus the continued access of more cost efficient gastroenterology outpatient procedures in the service area.

In sum, AmSurg is the most suitable partner for Diagnostic Endoscopy because it is a strong national company with the capability to bring numerous benefits to Diagnostic Endoscopy, its patients and the community. The involvement of AmSurg in the ownership of Diagnostic Endoscopy provides the Physician Owners with the ability to partner with a highly-experienced and financially responsible party that will improve Diagnostic Endoscopy's management, strengthen Diagnostic Endoscopy's ability to contract with other health plans, create administrative efficiencies, enhance operational guidelines and quality and patient satisfaction measures, increase long term viability, and establish other efficiencies, including, but not limited to, enhanced purchasing, staffing, information systems, and finance and accounting.

**AmSurg** – 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 systems development, administrative services, human resources, marketing and purchasing, financials and accounting. AmSurg was founded in 1992 as a Tennessee corporation and went public in 1997. Today, AmSurg currently operates over 220 centers in 35 states across the United States and has over 1,500 physician partners. A screen shot of AmSurg's website describing services is attached at Attachment A.

The interests of AmSurg as recipients of the ownership interest in Diagnostic Endoscopy are furthered by this transaction. In recent years, AmSurg has made it a practice to work collaboratively with local physicians in select joint venture arrangements; ownership of Diagnostic Endoscopy helps achieve this goal while integrating the AmSurg's services with a freestanding surgical center in a desirable community. AmSurg will benefit from this transaction by increasing its business in Connecticut and use its expertise to guide Diagnostic Endoscopy through the complex and competitive health care environment. Currently, AmSurg has financial interests in two Connecticut surgical centers: Wilton Surgery Center, LLC in Wilton and The Bloomfield Eye Surgery Center, LLC in Bloomfield. In these two facilities, AmSurg has developed a favorable track record with Connecticut ambulatory surgery centers. From AmSurg's perspective, this transaction represents the opportunity to expand its business in Connecticut and use its management expertise to maintain high quality and cost effective ambulatory surgical care in an increasingly complex and competitive healthcare environment.

Further, Diagnostic Endoscopy has a broad geographic draw as indicated in Attachment B. The patient origin data indicates the primary service area includes the Connecticut towns of Stamford, Greenwich, Darien, Riverside, Norwalk, Cos Cob, Old Greenwich, New Canaan, Westport and Wilton. A significant number of patients also come from New York. The broad patient base for Diagnostic Endoscopy exemplifies AmSurg's advantage in acquiring Diagnostic Endoscopy.

As noted above, this proposed change of ownership will provide Diagnostic Endoscopy and the opportunity to work collaboratively for the betterment of patient care. Joint ventures such as this one are both clinically and economically beneficial in an era where physicians wish to participate in the ownership and operation of facilities that treat their patients but often lack the access to capital, leverage with third-party payers and management expertise necessary to sustain such an enterprise. Here, Diagnostic Endoscopy's ability to continually provide high quality, efficient and cost effective gastroenterology outpatient surgical procedures to residents of southwestern Connecticut will be enhanced through the combined effort of physicians and an experienced manager of ambulatory surgical centers. It is for these reasons that the proposed sale of a 62% interest to AmSurg should be approved.

- c. **Provide a history and timeline of the proposal (e.g., When did discussions begin between the Applicants? What have the Applicants accomplished so far?).**

**RESPONSE:**

The parties began exploratory discussion in March 2012 on potential collaboration or acquisition by AmSurg. In-depth reviews were conducted by AmSurg regarding needs, the Center's operations, the impact of the purchase on AmSurg's affiliates and the Center's primary service area. Representatives of AmSurg conducted site reviews to evaluate quality, staff competence, physical plant and compliance with AAAHC standards.

Diagnostic Endoscopy unanimously approved the sale of 62% to AmSurg at the Board Meeting on May 7, 2012. See Attachment C for a redacted copy of the Board of Managers Meeting Minutes from May 7, 2012. A Letter of Intent was signed on May 7, 2012 between Diagnostic Endoscopy and AmSurg. Further, standard corporate due diligence is presently underway in anticipation of a closing as soon as possible subject to OHCA approval. See Attachment D for a copy of the executed Letter of Intent.

- d. **List any changes to the clinical services offered by the Applicants that result from this proposal, and provide an explanation.**

**RESPONSE:** The Applicants do not anticipate any changes to the clinical services provided at the Center.

- e. **Describe the existing population served by the facility changing ownership or control, and how the proposal will impact these populations. Include demographic information as appropriate.**

**RESPONSE:**

The patients currently served by the Center are from the geographic region as shown in Attachment B. The average age of the patients receiving treatment at the



Center is 59. The Center performed approximately 9,800 procedures last year. The payer mix by case volume is weighted toward commercial payers at 72% in 2011, followed by Medicare at 28% in 2011. Payer mix by revenue is 87% commercial and 13% government.

This population served by the Center is not expected to change. However, the change in ownership will improve management and operations, which will have the positive effect of providing more efficient and effective care which may result in increased productivity.

**f. Describe the transition plan and how the Applicants will ensure continuity of services. Provide a copy of a transition plan, if available.**

**RESPONSE:** There is no formal transition plan; however the parties will enter into a Definitive Agreement as soon as practicable detailing the agreement between Diagnostic Endoscopy and AmSurg. As indicated in the Letter of Intent, the transaction will terminate the management agreement with Merritt. As noted above, prior to closing, Diagnostic Endoscopy will merge into a Tennessee LLC and at the closing AmSurg will become a member of the Tennessee LLC.

The continuity of services will not be affected. After the transaction, the Center will continue to provide gastroenterology procedures. AmSurg will have the authority to provide day-to-day management services at Diagnostic Endoscopy as well as manage the operations of its Center, subject to medical oversight by the physician members of Diagnostic Endoscopy and consistent with the Center's policies similar to Merritt's current management arrangement. Continuity of quality care will be further ensured due to the fact that Diagnostic Endoscopy physicians will be able to utilize the resources of the national management company with proven success in daily management and long-term viability. The location and scope of services will remain the same. The AmSurg name and brand will ensure payers remain engaged with Diagnostic Endoscopy and encourage new payers to seek engagement.

**g. For each Applicant (and any new entities to be created as a result of the proposal), provide the following prior to and after this proposal:**

**i. Legal chart of corporate or entity structure including all affiliates.**

**RESPONSE:** See Attachment E for the corporate structure of Diagnostic Endoscopy pre- and post-transaction membership to this proposal.

**ii. List of owners and the % ownership and shares of each.**

**RESPONSE:** See Attachment F for the list of owners and their respective pre- and post-transaction membership interest in Diagnostic Endoscopy. The

62%/38% split represents AmSurg's desire to obtain a majority interest and the Physician Owners' desire to sell certain portions of their shares.

- h. Provide copies of all signed written agreements or memorandum of understanding, including all exhibits/attachments, between the Applicants related to the proposal. Note: If a final version is not available, provide a draft with an estimated date by which the final agreement will be available.**

**RESPONSE:** See Attachment D for copy of executed and signed Letter of Intent between the Diagnostic Endoscopy and AmSurg.

## **2. Quality Measures**

- a. Submit a list of all key professional, administrative, clinical, and direct service personnel related to the proposal. Attach a copy of their Curriculum Vitae.**

**RESPONSE:** See Attachment G for the list of key professional, administrative and clinical staff and respective CVs.

- b. Explain how the proposal contributes to the quality of health care delivery in the region.**

**RESPONSE:** Diagnostic Endoscopy provides services of high quality as evidenced by its historical outcomes, AmSurg's assessment of the Diagnostic Endoscopy's current operations and continuous accreditation status by the AAAHC. The Operating Agreement between AmSurg and Diagnostic Endoscopy will ensure consistent clinical oversight and quality control. AmSurg's management services focus on the provision of quality health care delivery and indicate AmSurg's dedication to providing quality health care services. AmSurg's facility management initiatives aim to ensure quality services by forming emergency management and preparedness policies. AmSurg facilities have consistently high patient satisfaction survey scores. Additionally, AmSurg's clinical and administrative resources and initiatives, quality improvement expertise, information technology capability and best practices information will contribute to the quality and value of the services provided.

## **3. Organizational and Financial Information**

- a. Identify the Applicant's ownership type(s) (e.g. Corporation, PC, LLC, etc.).**

**RESPONSE:** Diagnostic Endoscopy is a Connecticut limited liability company. Diagnostic Endoscopy will merge into a Tennessee limited liability company prior to the closing. AmSurg is a Tennessee Corporation.

b. Does the Applicant have non-profit status?

Yes (Provide documentation)  No

c. Provide a copy of the State of Connecticut, Department of Public Health license(s) currently held by the Applicant and indicate any additional licensure categories being sought in relation to the proposal.

RESPONSE: See Attachment H for Diagnostic Endoscopy's current Department of Public Health license. No additional licensure categories will be sought.

d. Financial Statements

i. **If the Applicant is a Connecticut hospital:** Pursuant to Section 19a-644, C.G.S., each hospital licensed by the Department of Public Health is required to file with OHCA copies of the hospital's audited financial statements. If the hospital has filed its most recently completed fiscal year audited financial statements, the hospital may reference that filing for this proposal.

RESPONSE: Not applicable.

ii. **If the Applicant is not a Connecticut hospital (other health care facilities):** Audited financial statements for the most recently completed fiscal year. If audited financial statements do not exist, in lieu of audited financial statements, provide other financial documentation (e.g. unaudited balance sheet, statement of operations, tax return, or other set of books.)

RESPONSE: See Attachment I for Diagnostic Endoscopy and AmSurg's financial statements.

e. Submit a final version of all capital expenditures/costs as follows:

**Table 2: Proposed Capital Expenditures/Costs**

Medical Equipment Purchase	\$
Imaging Equipment Purchase	
Non-Medical Equipment Purchase	
Land/Building Purchase *	
Construction/Renovation **	
Other Non-Construction (Specify)	
<b>Total Capital Expenditure (TCE)</b>	<b>\$ 12,583,950</b>
Medical Equipment Lease (Fair Market Value) ***	\$
Imaging Equipment Lease (Fair Market Value) ***	
Non-Medical Equipment Lease (Fair Market Value) ***	
Fair Market Value of Space ***	
<b>Total Capital Cost (TCC)</b>	<b>\$</b>
<b>Total Project Cost (TCE + TCC)</b>	<b>\$ 12,583,950</b>

Capitalized Financing Costs (Informational Purpose Only)	
Total Capital Expenditure with Cap. Fin. Costs	\$ 12,583,950

\* If the proposal involves a land/building purchase, attach a real estate property appraisal including the amount; the useful life of the building; and a schedule of depreciation.

\*\* If the proposal involves construction/renovations, attach a description of the proposed building work, including the gross square feet; existing and proposed floor plans; commencement date for the construction/ renovation; completion date of the construction/renovation; and commencement of operations date.

\*\*\* If the proposal involves a capital or operating equipment lease and/or purchase, attach a vendor quote or invoice; schedule of depreciation; useful life of the equipment; and anticipated residual value at the end of the lease or loan term.

- f. **List all funding or financing sources for the proposal and the dollar amount of each. Provide applicable details such as interest rate; term; monthly payment; pledges and funds received to date; letter of interest or approval from a lending institution.**

**RESPONSE:** AmSurg will use existing working capital to fund the \$12,583,950 purchase price. AmSurg also has a current \$450 million line of credit.

- g. **Demonstrate how this proposal will affect the financial strength of the state's health care system.**

**RESPONSE:** This proposal will improve the financial strength of the state's healthcare system by: (1) by leveraging existing payer contracts and 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, Diagnostic Endoscopy has a Financial Hardship Policy in which it provides certain qualifying patients with reduced fees. See Attachment J for the Financial Hardship Policy. 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 Diagnostic Endoscopy which in turn improves the financial health of the State's health care system.

#### 4. Patient Population Mix: Current and Projected

- a. **Provide the current and projected patient population mix (based on the number of patients, not based on revenue) with the CON proposal for the proposed program.**

**Table 3: Patient Population Mix – Diagnostic Endoscopy**

	Current FY 2011	Year 1 FY 2012	Year 2 FY 2013	Year 3 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%

<b>Total Government</b>	<b>27.79%</b>	<b>28.79%</b>	<b>29.79%</b>	<b>30.79%</b>
Commercial Insurers*	71.79%	70.79%	69.79%	68.79%
Uninsured	0.42%	0.42%	0.42%	0.42%
Workers Compensation	0.00%	0.00%	0.00%	0.00%
<b>Total Non-Government</b>	<b>72.21%</b>	<b>71.21%</b>	<b>70.21%</b>	<b>69.21%</b>
<b>Total Payer Mix</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

\* Includes managed care activity.

\*\* New programs may leave the “current” column blank.

\*\*\* Fill in years. Ensure the period covered by this table corresponds to the period covered in the projections provided.

**b. Provide the basis for/assumptions used to project the patient population mix.**

**RESPONSE:** These projections are based on the actual experience of Diagnostic Endoscopy and the projected increase in the aging population.

**5. Financial Attachments I & II**

**a. Provide a summary of revenue, expense, and volume statistics, without the CON project, incremental to the CON project, and with the CON project. Complete Financial Attachment I. (Note that the actual results for the fiscal year reported in the first column must agree with the Applicant’s audited financial statements.) The projections must include the first three full fiscal years of the project.**

**RESPONSE:** See Financial Attachment I.

**b. Provide the assumptions utilized in developing Financial Attachment I (e.g., full-time equivalents, volume statistics, other expenses, revenue and expense % increases, project commencement of operation date, etc.).**

**RESPONSE:** The assumptions utilized include a 5% growth in revenue and procedure from 2011 to 2012 due to an additional physician utilizer, a yearly 3% growth in revenue and procedure in 2013 and 2014 and a yearly 3% growth in expenses. These percentages are based on Diagnostic Endoscopy’s actual experiences.

The cost savings assumes a proposed 10% reduction in Professional/Contracted Services, a 20% reduction in Supplies/Drugs, and 15% reduction in Other Expenses for each projected year.

**c. Identify the entity that will be billing for the proposed service(s).**

**RESPONSE:** Diagnostic Endoscopy will bill for the facility fees. Individual physicians will bill for the professional components.

- d. As a result of the proposal, will there be any change to existing reimbursement contracts between the Applicants and payers (e.g. Medicare, Medicaid, commercial)? Explain.**

**RESPONSE:** There will be no changes to existing contracts. Diagnostic Endoscopy will not have any immediate change to payers. However, Diagnostic Endoscopy expects to increase its payer base by contracting with more payers after the transaction with AmSurg.

- e. Provide the minimum number of units required to show an incremental gain from operations for each fiscal year.**

**RESPONSE:** Not applicable, there are no incremental losses from the proposal.

- f. Explain any projected incremental losses from operations contained in the financial projections that result from the implementation and operation of the CON proposal.**

**RESPONSE:** Not applicable, there are no incremental losses from the proposal.

- g. Describe how this proposal is cost effective.**

**RESPONSE:** This proposal is cost effective because upon information and belief the costs of healthcare stakeholders in freestanding outpatient surgery centers versus an outpatient hospital setting are less for patients and payers. As noted above, efficiencies in the operation and administration, economies of scale with vendors and other costs will also be realized. The savings will be reflected in the operating expense of financial statements.

## Attachment A

### Contact Us

E-mail or give us a call  
1-877-741-0085

Name

Email

Phone

Send me updates about ASC news.



### AmSurg Services

Find out all that AmSurg has to offer. Check out our services from A to Z...  
[Learn More](#)

[Existing Partners](#)

## AmSurg Services

### What Can AmSurg Do For Me?

By partnering with AmSurg, you will receive the benefits of working with a pioneer and leader in surgery center management that is focused on enhancing physicians' services. Our services range from financial and operational to marketing and entrepreneurial. Our goal is to facilitate your professional and personal growth on your terms. Our services will help you with operating your center and strategically positioning your business for the future.

How can these services transform your surgery center? Learn about the **AmSurg Advantage** - the specific, unique benefits we can offer you and your center.

How can you obtain these services for your center? Contact us by phone at 877-741-0085 or email.

Strategic Services |  Operational Services

### Strategic Services

We offer these services and more to focus on the long-term success of your center

#### Advocacy

The Advocacy department advocates for partners on all government levels – national, state, and local – by working with ambulatory surgery centers (ASCs) and specialty societies to create and promote policies that support physicians who own and operate ASCs

- Communication Campaigns
- Education and Information
- Grassroots Advocacy
- Lobbying
- PAC

#### Anesthesia Management Services

As a natural extension to the administrative, operational and management expertise AmSurg currently provides, Anesthesia Management Services (AMS) offers centers a way to navigate the many regulatory challenges around the use of Propofol and still earn a share of the profit from this important ancillary service.

#### Development

AmSurg was founded on and expands through cultivating relationships with physicians, and Development is where those relationships begin.

The Development team has consistently led the industry in surgery center transactions, adding new centers to the AmSurg network each year. Consistent development activity over two decades has established AmSurg as the nation's leading operator of surgery centers.

With experience in negotiating surgery center development and acquisition transactions, Development works with physicians who want to gain the resources and expertise of a business partner in their new or existing surgery center.

- Referral Program

- Satellite Facility Development

#### Information Technology

Time is money, and AmSurg partners no longer have to waste time figuring out the best medical software for the center, implementing the applications, training staff and waiting on technical support

The Information Technology (IT) team ensures that all physician partners and their center staff have access to selected software, training and technical support needed to work productively.

IT offers scheduling and billing solutions, materials management programs, an electronic documentation system and a payroll system that could simplify center operations and administrative management

- Service Desk and Support

- eDocuments

- Insight

- NextGen EPM and EHR Practice Licenses

- ProValion

#### Marketing and Media Relations

In today's challenging economic environment, a well-conceived marketing strategy is critical to the growth of a surgery center. Yet, the options have probably never been more numerous or confusing. AmSurg's Marketing department can

help make sure the center's advertising dollars are generating a positive return.

- Awareness Campaign
- Direct Access Endoscopy
- Front Office Excellence
- Local Center Marketing
- Proactive Media Relations
- Digital Marketing
- Navigator
- Referring Physician Marketing

#### Physician Recruitment

AmSurg's Physician Recruitment program will work hard to meet a center's growing recruiting demands for a reasonable cost.

#### Quality

The Quality department builds ongoing relationships with and provides support to centers in order to offer a systematic approach to plan, measure, evaluate and improve safety and quality of care. Elements of quality can include patient experience as well as clinical and operational performance.

The Quality department staff also helps the center measure, monitor, evaluate and improve clinical outcomes, operational efficiencies and customer satisfaction in accordance with federal and state regulatory requirements.

- Accreditation
- Clinical Studies
- Patient Satisfaction Survey
- Policies and Procedures Library
- Quality Program Assessment
- Regulatory Compliance
- Risk Management

## Operational Services

We offer these services and more to help successfully run the day-to-day operations of your center.

#### Business Operations

From the moment a patient walks through a partner's door, the Business Operations team supports center staff – from check-in, to check-out, to charge entry, charge posting, verification of coverage and benefits, coding, claim processing, payment posting, denial management and patient scheduling.

- Education and Training
- Regulatory Compliance
- Revenue Cycle Management
- Central Billing Office
- ePay

#### Clinical

AmSurg Clinical Services provides specialty specific operational expertise when supporting day-to-day center operations. The Clinical Services team utilizes best practice information from more than 200 AmSurg centers nationwide.

Whether it is enhancing operating room efficiencies or overseeing quality improvement initiatives, Clinical Services can help institute policies that when combined with a partner's medical care, help ensure excellent patient outcomes and constant survey readiness.

- Clinical Expertise Support
- Continuous Survey Readiness and Regulatory Compliance
- Education and Training
- Infection Control
- Operational Efficiencies and Expense Management
- Policies and Procedures

#### Compliance

The Compliance department has the experience and skill-set to stay on top of ever-changing compliance standards to make sure the center complies with applicable laws. The Compliance team also offers extensive HIPAA subject matter expertise that helps the center with policies and procedures to comply with HIPAA regulations.

- Compliance Oversight
- Education and Training
- Licensure Application Support
- Prevention and Response

#### Contracting



A well-negotiated contract can deliver lasting value to the center, and the experienced Contracting team at AmSurg manages contracts by carefully reviewing and assessing the financial and language terms of the agreement, which can typically result in revenue gains.

- Contract Language Review
- Contract Negotiation
- Existing Contract Renegotiation
- Fee Schedule Analysis

#### Facilities Management and Construction

The Facilities Management and Construction team (FM&C) offers a wide range of services to the center, everything from emergency repair of heating, ventilation and air conditioning (HVAC), to dealing directly with architects and general contractors during expansion/construction projects.

FM&C's experts also have the skills to negotiate the best terms possible for the center's lease, and if it's time to expand or relocate, they can help find a suitable location and ensure the terms are working to the center's best advantage.

FM&C's goal is to save time and money on projects and repairs – but as important – minimize the time partners spend in managing and maintaining the facility.

- "One Call"
- Emergency Management
- Planning, Design and Construction
- Real Estate, Lease and Legal

#### Finance

The Finance department adheres to the highest accounting standards when streamlining a center's financial reporting processes and when helping partners make informed financial decisions about the center.

In addition, scenario-specific financial analyses can be prepared to examine the potential effect of changes in the business' or center's profits, such as modifying surgical procedures performed or the number of rooms in use.

- Financial Reports
- Payroll Support
- eBanking

#### Human Resources

The Human Resources team offers specialized, professional assistance and a variety of programs and tools that work to effectively manage human resources issues so partners can concentrate on improving the center's performance.

- Education and Training
- Employee Relations
- Background Checks
- Health and Welfare/Retirement Benefits
- HealthStream
- Job Postings

#### Materials Management

In partnering with AmSurg, the center instantly gains economies of scale and a competitive advantage by controlling costs at the center. The Materials Management team not only has the experience to read the pulse of a constantly evolving industry, but they consistently focus on finding ways to negotiate better supply and equipment prices for the center, producing tangible savings.

- Linens Contract Negotiation Expertise
- Periodic Automatic Replenishment (PAR)
- Pricing Review
- Purchasing Business Reviews
- Quotes
- SNAP

**Attachment B**

Patient Origin Data Collected by Zip Code in 2011

<u>Zip Code</u>	<u>Number of Patients</u>	<u>Percentage of Total</u>	<u>Town</u>	<u>State</u>
<b>CONNECTICUT</b>				
06901	1,924	26.039%	Stamford	CT
06830	1,538	20.815%	Greenwich	CT
06820	416	5.630%	Darien	CT
06878	399	5.400%	Riverside	CT
06850	371	5.021%	Norwalk	CT
06807	334	4.520%	Cos Cob	CT
06870	301	4.074%	Old Greenwich	CT
06840	218	2.950%	New Canaan	CT
06880	140	1.895%	Westport	CT
06897	105	1.421%	Wilton	CT
06824	58	0.785%	Fairfield	CT
06877	36	0.487%	Ridgefield	CT
06606	32	0.433%	Bridgeport	CT
06611	27	0.365%	Trumbull	CT
06896	23	0.311%	Redding	CT
06614	21	0.284%	Stratford	CT
06468	14	0.189%	Monroe	CT
06810	14	0.189%	Danbury	CT
06612	10	0.135%	Easton	CT
06460	9	0.122%	Milford	CT
06470	7	0.095%	Newton	CT
06484	7	0.095%	Shelton	CT
06430	6	0.081%	Fairfield	CT
06516	6	0.081%	West Haven	CT
06478	5	0.068%	Oxford	CT
06890	5	0.068%	Southport	CT
06801	4	0.054%	Bethel	CT
06804	4	0.054%	Brookfield	CT
06230	3	0.041%	Abington	CT
06405	3	0.041%	Branford	CT
06437	3	0.041%	Guilford	CT
06482	3	0.041%	Sandy Hook	CT
06483	3	0.041%	Seymour	CT
06488	3	0.041%	Southbury	CT
06518	3	0.041%	Hamden	CT
06770	3	0.041%	Naugatuck	CT
06106	2	0.027%	Hartford	CT
06355	2	0.027%	Mystic	CT

06378	2	0.027%	Stonington	CT
06490	2	0.027%	Southport	CT
06511	2	0.027%	New Haven	CT
06517	2	0.027%	Hamden	CT
06708	2	0.027%	Waterbury	CT
06754	2	0.027%	Cornwall Bridge	CT
06776	2	0.027%	New Milford	CT
06784	2	0.027%	Sherman	CT
06790	2	0.027%	Torrington	CT
06812	2	0.027%	New Fairfield	CT
06019	1	0.014%	Canton	CT
06067	1	0.014%	Rocky Hill	CT
06076	1	0.014%	Stafford Springs	CT
06081	1	0.014%	Tariffville	CT
06087	1	0.014%	Unionville	CT
06339	1	0.014%	Ledyard	CT
06410	1	0.014%	Cheshire	CT
06423	1	0.014%	East Haddam	CT
06436	1	0.014%	Green Farms	CT
06457	1	0.014%	Middletown	CT
06464	1	0.014%	Meriden	CT
06477	1	0.014%	Orange	CT
06525	1	0.014%	Woodbridge	CT
06706	1	0.014%	Waterbury	CT
06716	1	0.014%	Wolcott	CT
06723	1	0.014%	Waterbury	CT
06778	1	0.014%	Northfield	CT
06793	1	0.014%	Washington	CT
06798	1	0.014%	Woodbury	CT
<b>OTHER STATES</b>				
	1202	16.267%		NY
	31	0.420%		FL
	16	0.217%		NJ
	7	0.095%		MA
	5	0.068%		VT
	4	0.054%		RI
	3	0.041%		NH
	3	0.041%		PA
	2	0.027%		GA
	2	0.027%		LA
	2	0.027%		TX
	2	0.027%		CO
	1	0.014%		ME
	1	0.014%		VA
	1	0.014%		NC

	1	0.014%		OH
	1	0.014%		MI
	1	0.014%		NM
	1	0.014%		CA
	1	0.014%		HI
UNCLASSIFIED				
	1			
<b>TOTAL</b>	7,389			

Attachment C

**Board of Members Meeting Minutes**

DIAGNOSTIC ENDOSCOPY, LLC			
BOARD OF MANAGERS			
MEETING MINUTES			
Monday, May 07, 2012			
<b>MEMBERS PRESENT:</b>	Neda Khaghan, M.D., Alan Selkin, M.D., Stuart Waldstreicher M.D.	<b>UNABLE TO ATTEND:</b>	
<b>ATTENDANCE:</b>	William Mulhail, Richard Searles, Geri Callahan RN	<b>BY PHONE:</b>	
<b>TOPIC</b>	<b>DISCUSSION</b>	<b>STATUS</b>	<b>DIRECTION/COMMENT FINAL DETERMINATION</b>
<b>Call to Order</b>	The meeting was called to order at 18:00.	Closed	
<b>Previous minutes</b>	Review and approval of Minutes from 2/13/11.	Action	Minutes were approved as presented
	<b>REPORTS</b>		
<b>MAC Update</b>	Redacted	Action	Redacted
<b>Staffing</b>	Redacted	Action	Redacted
<b>Equipment</b>	Redacted	Open	
<b>Scheduling</b>	Redacted	Action	Redacted
<b>Financials</b>	Redacted	Action	Redacted
<b>Pathology</b>	N/A	Open	
<b>Anesthesia</b>	N/A	Open	
<b>IT/Systems</b>	N/A	Open	
<b>Reporting</b>	Redacted	Open	
<b>New Physicians</b>	Redacted	Open	
<b>Business Development</b>	Amsurg has provided the final Letter of Intent to be signed with the consent of all members.	Action	With the Consent of all Members, the Board approves the sale of 62% of the facility to Amsurg. Merritt to circulate the letter of intent to all members for signature.
<b>Center of Excellence</b>	Redacted	Open	
<b>Other</b>	Redacted	Open	
	<b>NEW BUSINESS</b>		
<b>Other</b>	N/A	Open	
<b>Adjournment</b>	The meeting was adjourned at 19:30	Closed	
<b>Next Meeting Date</b>	A subsequent meeting date will be circulated.	Open	
	Written by: R. Searles, Merritt Healthcare Solutions, on behalf of member partners.		
	17-May-12		

## Attachment D\*

\*please note Ronald Cirillo's signature appears on the wrong line

# AMSURG

May 7, 2012

Stuart Waldstreicher, MD  
Peter Gardner, MD  
Ronald Cirillo, MD  
William Pintauro, MD  
Neda Khaghan, MD  
Felice Zwas, MD  
Nelson Bonhelm, MD  
Alan Selkin, MD  
Diagnostic Endoscopy, LLC  
778 Long Ridge Road  
Stamford, CT

This Letter of Intent is to confirm our mutual intent for AMSURG Corp., through a wholly owned subsidiary, ("AMSURG"), to acquire a 62% ownership interest (the "AMSURG Interest") in Diagnostic Endoscopy Center, L.L.C. ("DEC"), which is currently owned, directly or indirectly, by Drs. Waldstreicher, Gardner, Cirillo, Pintauro, Khaghan, Zwas, Bonhelm and Selkin ("Physician Owners"). Our mutual understanding is as follows:

1. AMSURG will purchase an aggregate 62% ownership interest in DEC for a purchase price of \$12,583,950, less an amount equal to 62% of the outstanding indebtedness of DEC at closing. The purchase price may be adjusted by mutual agreement during due diligence to reflect changes in DEC's financial condition prior to the date of Closing (as defined below). The purchase price will be paid in cash via wire transfer at Closing. DEC will retain at Closing cash and cash equivalents necessary to satisfy certain mutually agreed upon accrued liabilities vendor payments and outstanding checks. The Physician Owners will be distributed all of DEC's remaining cash and cash equivalents at Closing.
2. As a condition to Closing, DEC will terminate the Management Agreement between DEC and DEC Merritt, LLC. Any termination fees due to DEC Merritt, LLC will be the responsibility of the Physician Owners. In determining the value of the AMSURG Interest, AMSURG has adjusted the valuation to reflect the elimination of the DEC Merritt management fee. This adjustment resulted in an increase to the purchase price of \$1,250,000.
3. The Definitive Agreement (as defined below) for the transaction contemplated by this Letter of Intent will be executed on or before June 20, 2012, or such other date as the parties may mutually agree. The final closing of the transactions contemplated by Definitive Agreement (the "Closing") will occur as soon as possible after the parties receive a Transfer of Ownership CON (as defined below) approving AMSURG's acquisition of the AMSURG Interest in DEC. The Definitive Agreement will provide that either party shall have the right to terminate the Definitive Agreement and the transactions contemplated thereby in the event the transactions contemplated by the Definitive Agreement are not consummated by January 1, 2013.
4. The parties will enter into a mutually acceptable definitive purchase agreement ("Definitive Agreement") that is consistent with the terms of this Letter of Intent, and

includes such representations, warranties, covenants and conditions as are typical for a transaction of this nature. AMSURG will begin conducting due diligence immediately after execution of this Letter of Intent, and such due diligence shall be completed within sixty (60) days thereafter, before execution of the Definitive Agreement. Accordingly, satisfactory due diligence results will not be a condition to Closing the Definitive Agreement.

5. Prior to Closing, DEC will merge or convert, as permitted under Connecticut law, into a Tennessee limited liability company (the "Tennessee LLC"). Promptly following the execution of the Definitive Agreement, the parties will submit to the Connecticut Department of Public Health (the "Department") a Transfer of Ownership Certificate of Need ("CON") application seeking CON approval from the Department of AMSURG's acquisition of the AMSURG Interest. At the Closing, AMSURG will become a member of the Tennessee LLC and the Tennessee LLC will apply for a new clinic license based on the change of ownership of DEC.
6. At Closing, the parties will enter into an Operating Agreement for the Tennessee LLC which shall include mutually agreed terms. The Operating Agreement of the Tennessee LLC will provide that each of AMSURG and the Physician Owners shall have a fiduciary duty to act at all times in a manner such person reasonably believes to be in the best interest of the Tennessee LLC, in good faith and with the care of an ordinarily prudent person in a like position would exercise under similar circumstances.
7. The Operating Agreement of the Tennessee LLC will provide that all decisions at the member (owner) level will require the concurrent approval of a majority of the interests held by AMSURG and a majority of the non-AMSURG interests in the Tennessee LLC held by the Physician Owners. Management of the Tennessee LLC will be overseen by a governing board having equal representation from the Physician Owners and from AMSURG, except to the extent delegated by mutual agreement of the parties. The parties will mutually agree on a list of major actions that will be reserved to, and require approval of, the governing board of the Tennessee LLC. The governing board of the Tennessee LLC will act by concurrent approval of a majority of the AMSURG representatives and a majority of the Physician Owner representatives.
8. The Operating Agreement will provide that, following the Closing, AMSURG will provide certain management and administrative services necessary to operate the Tennessee LLC's free-standing ambulatory surgery center ("ASC") in an efficient and business-like manner in accordance with prevailing industry standards (the "Management Services"). The Management Services will include assisting in operations, coordinating purchases and leases, maintenance of licenses and marketing programs, negotiating reimbursement, overseeing charge structure, negotiating financing for future needs, developing policies and procedures (including but not limited to human resource and compliance policies and procedures), overseeing recruiting of ASC personnel, training ASC personnel, physician recruitment, arranging for insurance coverage, overseeing accounting procedures and systems, overseeing the preparation of the annual report and tax information returns, furnishing reports, and preparing budgets, all as shall be set forth in more detail in the Operating Agreement. Unless agreed otherwise by the Parties prior to Closing, AMSURG, shall charge 10% of Net Profit for any Management Services, subject to a minimum of \$150,000 annually and maximum of \$300,000 annually. Net Profit shall be defined as revenue net of all expenses. All Management Services will be provided at the direction and under the supervision of the governing

board of the Tennessee LLC, except to the extent delegated by agreement of the parties. The Operating Agreement will also require the Physician Owners to provide the ASC with a Medical Director and a Performance Improvement Committee Chair who are reasonably acceptable to the governing board of the Tennessee LLC. [Compensation of the Medical Director and PI Chairman to be discussed. Any compensation paid to those persons by the LLC would result in an adjustment to the purchase price.]

9. The Operating Agreement will provide that when a new physician is added as a member/owner of the Tennessee LLC after the first twelve months following the Closing, AMSURG's interest in the Tennessee LLC will be diluted on an equal basis with the Physician Owners, to not less than 51%. If AMSURG's interest is diluted to 51%, then admission of any new physician will thereafter only dilute the interest of the Physician Owners. The transfer of any membership interest among Physician Owners or to a new physician, and admission of any new Physician Owner will require the approval of the governing board of the Tennessee LLC.
10. The Operating Agreement will provide that if future regulatory changes restrict the Physician Owners' ability to own an interest in the Tennessee LLC, then AMSURG may purchase the Physician Owners' interest in the Tennessee LLC as may be necessary to correct the problem for a purchase price equal to three times trailing twelve months profit before interest, taxes, depreciation and amortization ("EBITDA"), with this amount reduced by a pro rated portion of the Tennessee LLC's debt.
11. The Operating Agreement will provide that Physician Owners will not have any direct or indirect ownership interest in, or manage, lease, develop or otherwise have any financial interest in any business or entity (other than a physician office practice that does not perform surgical procedures for which facility or tray fees are charged in addition to standard professional fees) competing or planning to compete with the Tennessee LLC within a twenty five (25) mile radius of the ASC (the "Market Area"), or become an employee of a hospital or an affiliate of a hospital that is located within the Market Area, or enter into any contract or other arrangement (whether as a result of his or her employment or otherwise) that requires or incentivizes him or her to perform procedures at any hospital or facility affiliated with a hospital in the Market Area, until the later of (i) five (5) years from the date of Closing or (ii) two (2) years after Physician Owner ceases to be an owner of the Tennessee LLC; provided, that a Physician Owner may become an employee of a hospital or hospital affiliate and may receive compensation paid by such a hospital or affiliate that does not require such Physician Owner to perform ambulatory surgical procedures at the employing hospital or affiliate and which compensation is not based, in whole or in part, on ambulatory surgery referrals to or procedures performed at the employing hospital or affiliate.
12. The Operating Agreement will require, at the option of the remaining Physician Owners, each Physician Owner to sell his interest to the remaining Physician Owners or another physician reasonably acceptable to the remaining Physician Owners and AMSURG in the event that he (i) becomes disabled, dies or otherwise ceases the practice of medicine, or (ii) leaves the market area in which the ASC is located, (iii) loses his medical license, is excluded from Medicare or Medicaid, or is convicted of a health care felony, or (iv) violates the restrictions regarding ownership in a competing facility.



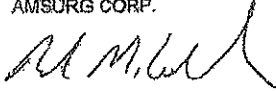
13. Any sale by AMSURG of any interest in the Tennessee LLC to any party, including any hospital or hospital affiliate in the Market Area will be subject to approval of a majority in interest of the Physician Owners.
14. Each of us shall be responsible for our own expenses incurred in connection with the proposed transaction, except that DEC will pay the costs up to \$20,000 incurred by the parties in connection with the Transfer of Ownership CON and associated clinic license process, AmSurg shall pay the next \$20,000 of costs in excess of \$20,000, and the parties shall split any costs in excess of \$40,000, with 62% to be paid by AmSurg and 38% to be paid by DEC.
15. The parties wish to retain the services of the current staff of the ASC. Following the Closing, staff will receive compensation and benefits commensurate with their compensation and benefits prior to the Closing.
16. Travel expenses for the Tennessee LLC, which would include AMSURG employees and ASC employees, would be budgeted annually and would not exceed \$20,000 per year without the express consent of the governing board.
17. The Closing of the transactions contemplated by this Letter of Intent is contingent on the parties' receiving a Transfer of Ownership CON approving AMSURG's acquisition of the AMSURG Interest, and approval by AMSURG's and DEC's governing boards.
18. From the date of execution of this Letter of Intent until the earlier of (i) ninety (90) days from such execution date, or (ii) termination of this Letter of Intent, DEC and its members, affiliates and representatives will not without the approval of AMSURG (a) offer for sale all or substantially all of the assets of, or ownership interests in, DEC or the ASC, (b) solicit offers to buy all or substantially all of the assets of, or ownership interests in, DEC or the ASC, (c) hold discussions with any party (other than AMSURG) looking toward such an offer or solicitation or looking toward a merger or consolidation of any entity owning any such assets or ownership interests, or (d) enter into any agreement with any party (other than AMSURG) with respect to the sale or other disposition of such assets or ownership interests or with respect to any merger, consolidation or similar transaction involving an entity owning any such assets or ownership interests. This Letter of Intent may be terminated by AMSURG or DEC at any time on thirty (30) days notice to the other party.
19. The parties shall maintain this Letter of Intent in confidence and shall not disclose it or its contents to any third party, except for their respective attorneys, representatives, officers, boards and employees on a need to know basis. No party shall make any public announcement or release to the press concerning this Letter of Intent without the prior written consent of the other party. In addition, except as and to the extent required by applicable law, regulation or legal process, neither Party, nor any affiliate, parent or related entity of AMSURG, nor any of their respective directors, officers, members, employees, accountants, and other agents and representatives (collectively, "Representatives") shall disclose or use any Confidential Information (as defined herein) with respect to the other party furnished, or to be furnished, by such other party to such receiving party or its Representatives in connection herewith at any time or in any manner, other than in connection with the evaluation of the transactions proposed by this Letter of Intent. For purposes of this Section, "Confidential Information" means all oral, written or electronic information of or relating to either party, relating to the proposed transactions, including but not limited to proprietary information, intellectual property, and

financial information of a party; provided, however, that Confidential Information does not include information which (i) is generally available to and known by the public other than as a result of disclosure by the receiving party or its Representatives; (ii) is independently obtained by a party or its Representatives without violating their obligations under this Letter of Intent; (iii) is available to a party or its Representatives from a source that is not prohibited from disclosing the information by a legal, contractual or fiduciary obligation to the other party, or (iv) is required in connection with legal proceedings. Each party shall, at the request of the other party, either promptly (a) deliver to the other party, or (b) destroy, all Confidential Information of the other party in its possession upon termination of this Letter of Intent.

20. The parties agree and acknowledge that, except as provided herein below, this Letter of Intent is non-binding, and does not obligate any party to proceed with, or otherwise complete, the Definitive Agreement or any other transaction. With the exception of the provisions set forth herein in Sections 18-20, which the parties agree create legal and binding obligations, this Letter of Intent does not, and is not intended to create, any legal obligation or enforceable right in any party. The parties further expressly acknowledge that, prior to the execution of this Letter of Intent, there have not been any binding commitments, agreements or understandings between them with respect to any future relationship of any kind. Moreover, if the parties proceed to enter into a Definitive Agreement, then all of the agreements, representations, warranties, indemnities, covenants and conditions with respect thereto shall be only as set forth in the Definitive Agreement.
21. This Letter of Intent shall be governed by the substantive laws of the State of Connecticut without regard to the principles of conflicts of laws thereof. The parties consent to the jurisdiction of the courts of Connecticut and of any federal court located in Connecticut in connection with any action or proceeding arising out of this Letter of Intent. The parties waive any objection they may have to the laying of venue in the state or federal courts located in Connecticut, of any action or proceeding arising out of this Letter of Intent. In any action to enforce this Letter of Intent or on account of any breach of this Letter of Intent, the prevailing party shall be entitled to recover, in addition to all other relief, its reasonable attorneys' fees and court costs associated with such action. No party shall be liable to another party for any consequential, indirect, incidental, special, exemplary or punitive damages arising out of or related to this Letter of Intent.
22. This Letter of Intent constitutes the entire understanding and agreement between the parties and their affiliates with respect to its subject matter and supersedes all prior or contemporaneous agreements, representations, warranties and understandings of the parties, whether oral or written. Parol evidence and extrinsic evidence shall be inadmissible to show agreement by and between the parties to any term or condition contrary or in addition to the terms and conditions contained in this Letter of Intent.
23. No party may transfer or assign all or any of its rights, obligations or benefits hereunder in whole or in part to any third party, without the prior written consent of the other parties. This Letter of Intent may be amended only by written agreement, signed by a duly authorized officer of each party. This Letter of Intent may be executed in counterparts (and the same may be delivered by means of facsimile or pdf file), each of which shall be deemed an original and to constitute one and the same instrument.

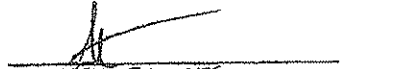
This letter represents our present intentions and it is not intended to be a formal agreement between us or a binding obligation. All obligations to consummate the proposed transaction shall be contained only in the definitive purchase agreement and other contemplated agreements.

AMSURG CORP.



Rob McCullough  
Vice President, Development

Accepted and agreed to this 7 day of MAY, 2012:

  
\_\_\_\_\_  
Stuart Waldstreicher, MD  
\_\_\_\_\_  
Peter Gardner, MD

\_\_\_\_\_  
Ronald Cirillo, MD

\_\_\_\_\_  
William Pintauro, MD

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Neda Khaghan, MD

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Felice Zwas, MD

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Nelson Bonheim, MD

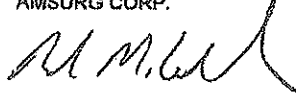
\_\_\_\_\_  
Alan Selkin, MD

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This letter represents our present intentions and it is not intended to be a formal agreement between us or a binding obligation. All obligations to consummate the proposed transaction shall be contained only in the definitive purchase agreement and other contemplated agreements.

AMSURG CORP.




Rob McCullough  
Vice President, Development

Accepted and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2012:

\_\_\_\_\_  
Stuart Waldstreicher, MD

\_\_\_\_\_  
Peter Gardner, MD

\_\_\_\_\_  
Ronald Cirillo, MD

  
\_\_\_\_\_  
William Pintauro, MD

\_\_\_\_\_  
Neda Khaghan, MD

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Nelson Bonheim, MD

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Alan Selkin, MD

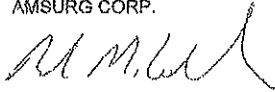
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AMSURG CORP.



Rob McCullough  
Vice President, Development

Accepted and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2012:

\_\_\_\_\_  
Stuart Waldstreicher, MD

\_\_\_\_\_  
Peter Gardner, MD

\_\_\_\_\_  
Ronald Cirillo, MD

\_\_\_\_\_  
William Pintauro, MD

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Neda Jhaghhan, MD

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Felice Zwas, MD

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Nelson Bonheim, MD

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Alan Selkin, MD

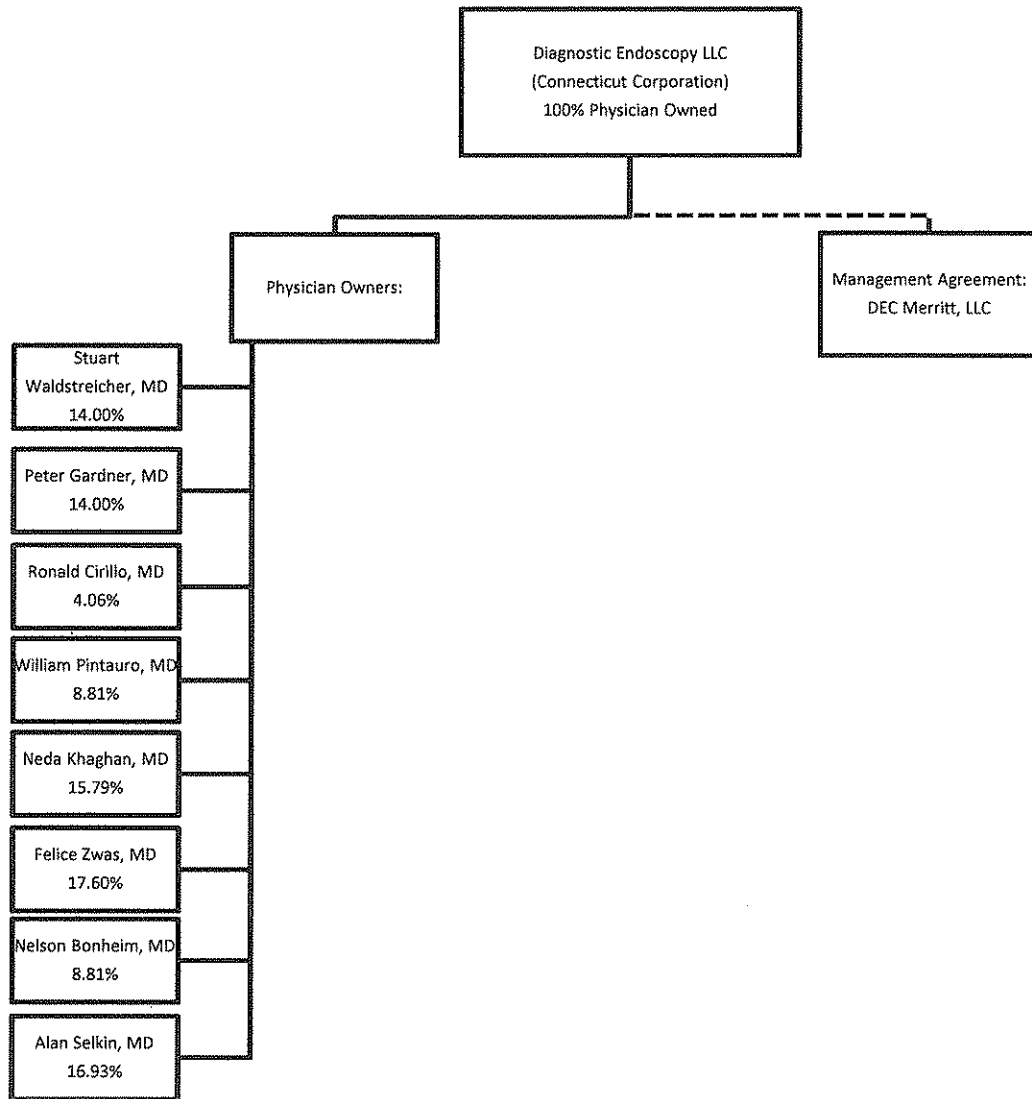
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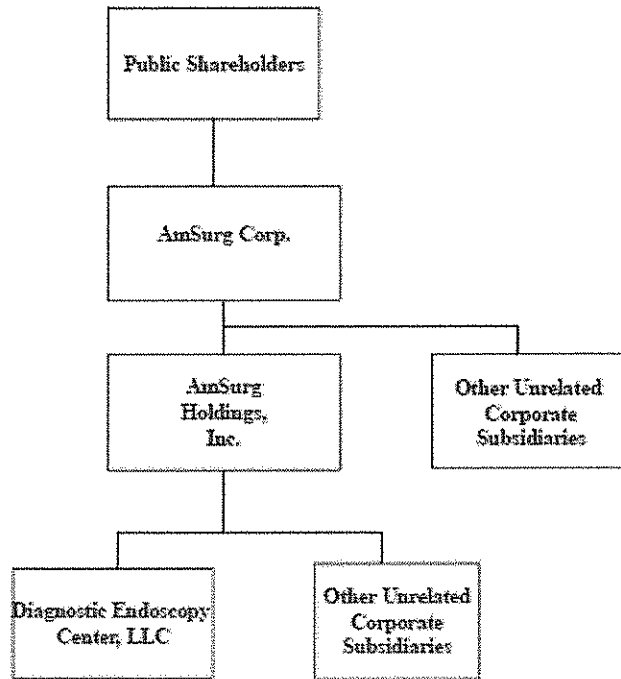
Attachment E

Organizational Chart of Diagnostic Endoscopy Pre-Transaction

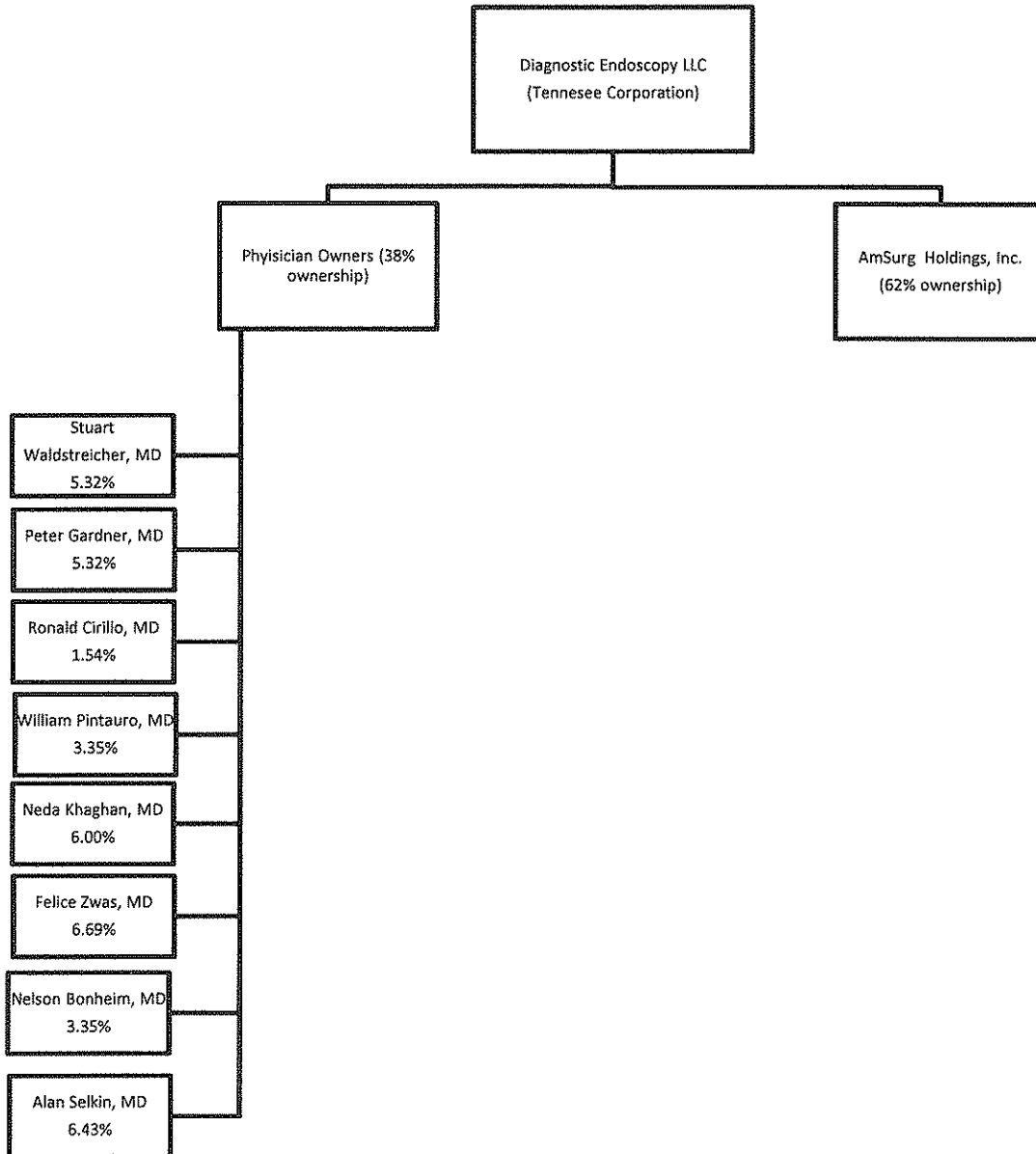


Organizational Chart of AmSurg Corp. and AmSurg Holdings, Inc. Pre-Transaction

**Organizational Chart of AmSurg**



Organizational Chart of Diagnostic Endoscopy Post-Transaction





**Attachment F**

<b>Seller's Name</b>	<b>Pre-Transaction Membership Interest</b>	<b>Membership Interest Transfer</b>	<b>Post Transaction Membership Interest</b>
Merritt	0.00%	0.00%	0.00%
Stuart Waldstreicher, MD	14.00%	-8.98%	5.32%
Peter Gardner, MD	14.00%	-8.68%	5.32%
Ronald Cirillo, MD	4.06%	-2.52%	1.54%
William Pintauro, MD	8.81%	-5.46%	3.35%
Neda Khagan, MD	15.79%	-9.79%	6.00%
Felice Zwas, MD	17.60%	-10.91%	6.69%
Nelson Bonheim, MD	8.81%	-5.46%	3.35%
Alan Selkin, MD	16.93%	-10.51%	6.43%
AmSurg	0.00%	62%	62%
Total	100%		

## Attachment G

### **List of Key Professional, Administrative and Clinical Staff**

#### Diagnostic Endoscopy

Stuart Waldstreicher, M.D., Physician Owner	39
Peter Gardner, M.D., Physician Owner	42
Ronald Cirillo, M.D., Physician Owner	45
William Pintauro, M.D., Physician Owner	49
Neda Khagan, M.D., Physician Owner	50
Felice Zwas, M.D., Physician Owner	53
Nelson Bonheim, M.D., Physician Owner	58
Alan Selkin, M.D., Physician Owner	61

#### AmSurg

Christopher A. Holden, President, Chief Executive Officer and Director	62
Rob McCullough, Vice President of Development	63
Claire M. Gulmi, Executive Vice President, Chief Financial Officer, Secretary and Director	64
Phillip A. Clendenin, Senior Vice President, Corporate Services and Chief Compliance Officer	65
Billie A. Payne, R.N., Senior Vice President, Operations	66

**Curriculum Vitae**

**Stuart Waldstreicher, M.D., F.A.C.G.**

Birthdate 04/07/58

Birthplace New York, New York

Citizenship U.S.A.

OFFICE: 778 Long Ridge Road Suite 101 Stamford, CT 06902.

TELEPHONE: Office (203) 967-2100.

**PRACTICE HISTORY:**

Gastroenterology Consultants, P.C. (1987-present)

**EDUCATION AND TRAINING:**

B.S. - City College of New York- School for Biomedical Education, New York, N.Y.  
1976-1980.

Medical Degree - New York Medical College, Valhalla, N.Y. 1980-1982

Intern in Medicine, Overlook Hospital, Summit, N.J. 1982-1983.

Resident in Medicine, Overlook Hospital, Summit, N.J. 1983-1985.

Fellow in Gastroenterology, New York Medical College, Valhalla, N.Y. 1985-1987.

**CERTIFICATION:**

National Board of Medical Examiners

ABIM Diplomate in Internal Medicine (103332)

ABIM Diplomate in Internal Medicine (Gastroenterology) (103332)

**State Medical License:**

Connecticut 027907 2-09-87

**APPOINTMENTS:**

Assistant Clinical Professor of Medicine, Columbia Medical Center, New York, NY  
(1998-present)

Clinical Instructor of Medicine, New York Medical College, Valhalla, New York (March  
1990 - present).

Attending Physician, Department of Medicine, St. Joseph's Medical Center,  
Stamford, CT (Hospital purchased by Stamford Hospital) (1987-1998)

Attending Physician, Department of Medicine, Stamford Hospital, Stamford, CT.

Visiting Staff, Department of Medicine, Greenwich Hospital (2007-present)

Associate Attending Physician, John E. Runnels Hospital, Berkeley Heights, N.J.  
(1984-1985).

Chairman of Pharmacy and Therapeutics Committee, St. Joseph Medical Center  
(1988).

Chairman of Medical Records Committee, The Stamford Hospital (1992-2004).

Medical Board of The Stamford Hospital (1994-1996).

Medical Board of The Tandet Center (1994-present).

Board of Directors of The Stamford Health Network (1995-1999).

**NATIONAL ORGANIZATIONS:**

American Medical Association  
American College of Gastroenterology, Fellow  
American Gastroenterological Association  
Crohn's and Colitis Foundation of America  
American College of Physicians

**STATE AND LOCAL ORGANIZATIONS:**

Connecticut State Medical Society  
Fairfield County Medical Association

**PRESENTATIONS:**

A Long Term Follow-up of Orthodox Jewish Children Seen as Patients in a Mental Health Center by Fred Krause, Ph.D. and Stuart Waldstreicher. Presented at "Perspectives on Children's Mental Health Services: Psychopathology and Social Structures." Biltmore Hotel, N.Y. 1978.

The Endoscopic Characteristics of Strongyloides Stercoralis Duodenitis: A Case Report. Presented at Gastroenterology Fellows Night, Memorial Hospital, N.Y.

The Use of ERCP in the Management of an Echinococcal Cyst: A Case Report. Presented at Gastroenterology Fellows Night, Memorial Hospital, N.Y.

Medical Grand Rounds Presentation: Cholelithiasis, The Stamford Hospital, August, 1994.

**HONORS:**

New York Magazine, The Best Doctors in New York (Gastroenterology), June 5<sup>th</sup>, 2000

New York Magazine, The Best Doctors in New York (Gastroenterology) June 7<sup>th</sup>, 1999

Top Doctors in New York Metro Area, 2001

CURRICULUM VITAE

Peter W. Gardner, M.D., F.A.C.P., F.A.C.G.

PERSONAL INFORMATION: Birthdate 12/22/53  
Birthplace New York, New York  
Citizenship U.S.A.

OFFICE: 778 Long Ridge Road  
Suite 101  
Stamford, CT 06902

TELEPHONE: Office (203) 967-2100

EDUCATION AND TRAINING:

B.A. - University of North Carolina, Chapel Hill, NC 1971-75  
M.D. - Georgetown University School of Medicine  
Washington, D.C. 1975-79  
Intern in Medicine, St. Vincent's Hospital and  
Medical Center, New York, NY 1979-80  
Resident in Medicine, St. Vincent's Hospital and  
Medical Center, New York, NY 1980-81  
Senior Resident in Medicine, St. Vincent's Hospital  
and Medical Center, New York, NY 1981-82  
Fellow in Gastroenterology, University of Connecticut  
Health Center, Farmington, CT 1982-84

CERTIFICATION:

National Board of Medical Examiners (211424)  
ABIM Diplomate in Internal Medicine (084740)  
ABIM Diplomate in Internal Medicine  
(Gastroenterology) 084740)

APPOINTMENTS:

Assistant Clinical Professor, Department of Behavioral Sciences and Community Medicine,  
University of Connecticut Health Center, Farmington, CT 1983-1984  
Attending Physician, St. Vincent's Medical Center, Consulting Privileges, Bridgeport, CT  
1988-1991  
Associate Clinical Professor, Department of Medicine, New York Medical  
College, New York, NY 1986-1999

Assistant Clinical Professor of Medicine, Columbia Medical Center, New York, NY	1998-Present
Attending Physician, Department of Medicine, Stamford Hospital, Stamford, CT	1984-present
Visiting Staff, Department of Medicine, Greenwich Hospital	2006-present
Attending Physician, Department of Medicine St. Joseph's Medical Center, Stamford, CT (Hospital purchased by Stamford Hospital)	1984-1998
Visiting Staff, Department of Medicine, Greenwich Hospital	1998-2000
Chairman, Pharmacy and Therapeutics Committee, The Stamford Hospital	1989-2000
Chief, Division of Gastroenterology, The Stamford Hospital, Stamford, CT	1994-2000
Chairman, Quality Improvement Committee, HealthNet (Formerly Physicians Health Services), Shelton, CT	1993-2005

NATIONAL ORGANIZATIONS:

American Medical Association  
 American College of Physicians  
 American College of Gastroenterology  
 American Gastroenterological Association  
 American Society of Gastrointestinal Endoscopy  
 American Liver Foundation  
 American Medical Informatics Association  
 National Colitis and Ileitis Foundation  
 Phi Beta Kappa  
 Phi Eta Sigma  
 Alpha Epsilon Delta  
 Sigma Xi

STATE AND LOCAL ORGANIZATIONS:

Connecticut State Medical Society, Gastroenterology Section  
 Fairfield County Medical Association  
 Stamford Medical Society

RESEARCH GRANTS:

Sigma Xi (Undergraduate Research in the Division of Neurology) "The Natural History of Adolescent Onset Seizures"

HONORS:

Top Doctors New York Metro Area, 2009, 13<sup>th</sup> Edition.  
 Fairfield County 101 Top Doctors 2008. Greenwich, New Canaan and Westport Magazines: January, 2008.  
 New York Metro Area Top Doctors 2007, 11<sup>th</sup> Edition  
 Top Doctors New York Metro Area, 2001, 5<sup>th</sup> Edition.  
 Best Doctors in America, 2000.  
 How to Find the Best Doctors: New York Metro Area, 1999.  
 Who's Who in America Among Executives and Professionals. Who's Who, 1997-2000.  
 Connecticut's Top Doctors. Connecticut Magazine; July, 1996.

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PUBLICATIONS:

- Gardner, P.W.: Monograph on Lateral Epicondylitis; UNC Press, 1974.
- Gardner, P.W., Butler, T.P.: Gastric Adenocarcinoma in a Patient with von Recklinghausen's Disease. *NY Med Quart* 2:39-40, 1981.
- Morton, R.E., Gardner, P.W., Ball, M.F.: Pancreatic Ascites: An Unusual Complication of Hyperparathyroidism. *South Med J* 74:495-6, 1981.
- Gardner, P.W., Whyte, T.R.: CT Complications of Crohn's Disease. In *CT Clinical Application Series*. Vol. 2, No. 5, 1983.
- Gardner, P.W., Tomicic, T.K., and Hajjar, J.R.: The Effect of Ethanol on Choline Influx Across the Mucosal Border of the Rat Intestine. Abstract. American Gastroenterological Association Meeting, May 1984, New Orleans.
- Hajjar, J.J., Baker, E.R., Renison, D.M., Gardner, P.W., Zirin, R., and Tomicic, T.K.: Effect of Ethanol on Choline Transport in Rat Jejunum. *Am J Physiol* 249 (Gastrointest. Liver Physiol. 12): G177-G183, 1985.
- Faripour A, Mohit M, Gardner PW, Smith N: Cholesterol Embolism Causing Bleeding Gastric Ulcers. *Ann Clin Lab Sci*. 1988 May-Jun;18(3): 260-5.
- Jacobson IM, Brown RS Jr, Freilich B, Afdhal N, Kwo PY, Santoro J, Becker S, Wakil AE, Pound D, Godofsky E, Strauss R, Bernstein D, Flamm S, Pauly MP, Mukhopadhyay P, Griffel LH, Brass CA; WIN-R Study Group: Peginterferon alfa-2b and weight-based or flat-dose ribavirin in chronic hepatitis C patients: a randomized trial. *Hepatology*. 2007 October; 46(4): 971-81.
- Jacobson IM, Gonzalez SA, Lebovics E, Min AD, Bodenheimer Jr. HC, Esposito SP, Brown, Jr. RS, Brau N, Klion FM, Tobias H, Bini EJ, Brodsky N, Cerulli MA, Aytaman A, Gardner PW, Geders JM, Spivack JL, Rahmin MG, Berman DH, Ehrlich J, Russo MW, Chait M, Rovner D, Ahmed F, Edlin BR: A Randomized Trial of Pegylated Interferon Alfa-2b plus Ribavirin in the Retreatment of Patients with Chronic Hepatitis C Unresponsive to Prior Therapy. *Am J Gastroenterol*. 2005 Nov;100(11):2453-62.
- New York PEG Intron Study Group: PEG Interferon Alfa-2B Plus Ribavirin in Nonresponders to Interferon, and in Relapsers and Nonresponders to Combination Therapy (Abstract). Schering Hepatitis Investigators' Network. Orlando, Florida. Feb 8-11, 2001.
- New York Presbyterian Medical Center, et al.: Daily vs. Thrice Weekly Interferon In Combination with Ribavirin for Patients with Chronic Hepatitis C Infection Who Are Either Naïve to Treatment, Relapsed-Failed Prior Interferon Therapy, or Relapsed-Failed Prior Combination Therapy (Daily Interferon Only) (Abstract). Schering Hepatitis Investigators' Network. Orlando, Florida. Feb 8-11, 2001.
- Shames, D.S., Gardner, P.W., Tucker, J.: Serum Amylase, Lipase, and the Lipase/Amylase Ratio in the Severity of Acute Pancreatitis. Poster Presentation, Connecticut Chapter of the American College of Physicians, May, 1998.



**Ronald J. Cirillo, M.D.**  
CURRICULUM VITAE

**NAME:** Ronald J. Cirillo, M.D.

**DATE OF BIRTH:** April 6, 1947

**CITIZENSHIP:** United States Citizen

**MARITAL STATUS:** Married (Kay Styc)

**CHILDREN:** Devin Catherine Cirillo  
Date of Birth: February 2, 1985

Christian Alexander Cirillo  
Date of Birth: June 17, 1988

**HOME ADDRESS:** 42 Rippowam Road  
New Canaan, CT 06840

**HOME PHONE:** (203) 972-1650

**BUSINESS ADDRESS:** 80 Mill River Street  
Suite 1100  
Stamford, CT 06902

**BUSINESS PHONE:** (203) 348-5818

**EDUCATION:** HIGH SCHOOL  
Brooklyn Technical High School  
Brooklyn, New York  
Date of Graduation - 1964

COLLEGE  
St. John's University  
Jamaica, New York  
Date of Graduation - 1968  
Degree: B.A.

**EDUCATION:** Elected to Who's Who Among Students in  
American Colleges and Universities - 1967  
Elected to Presidency of Pi Alpha Sigma Fraternity - 1968

Brooklyn College (C.C.N.Y.)  
Brooklyn, New York  
Date of Graduation - 1972  
Degree: M.S.

Appointed to Education Honor Society  
Brooklyn College (C.C.N.Y.)  
Brooklyn, New York - 1972

EMPLOYMENT

New York City Board of Education  
School Guidance Counselor  
1968 - 1970

New York City Board of Education  
Bureau of Child Guidance  
Title: Director of Guidance Services for the  
Emotionally Disturbed 1970 - 1974

MEDICAL SCHOOL

Le Universidad Autonoma de Guadalajara  
Guadalajara, Mexico  
Date of Graduation - December 1978  
Degree: Doctor of Medicine and Surgery

POST GRADUATE  
TRAINING:

Internado Program  
Lutheran Medical Center  
Brooklyn, New York  
Date of Completion - 1979

Fifth Pathway Program  
Downstate Medical Center  
Brooklyn, New York  
Date of Completion - 1980

Brooklyn Breast Cancer Demonstration Network  
Downstate Medical Center  
Lutheran Medical Center  
Brooklyn, New York  
Date of Completion - 1980

Lutheran Medical Center  
Brooklyn, New York  
Categorical Intern in Medicine 1980 - 1981

Lutheran Medical Center  
Brooklyn, New York  
Resident in Internal Medicine 1981 - 1983

University of Medicine and Dentistry of  
New Jersey  
Rutgers Medical School at Camden  
Cooper Hospital/University Medical Center  
Camden, New Jersey  
Fellowship in Gastroenterology  
1983 - 1985

EXPERIENCE: During my fellowship I have had extensive experience in the diagnosis of gastrointestinal and related medical disorders. I have developed competency in:

1. Upper endoscopy and related procedures including:
  - (i) Variceal sclerosis
  - (ii) Polypectomy (from stomach to duodenum)
  - (iii) Dilation of gastric outlet including gastric stapling outlet obstruction (balloon dilatation)
  - (iv) Percutaneous endoscopic gastrostomy and jejunostomy
2. Colonoscopy and related procedures including;

- (i) Polypectomy
3. Sigmoidoscopy
  4. ERCP and papillotomy and stent placement
  5. Esophageal manometry
  6. Pneumatic dilatation of esophagus
  7. Bougienage
  8. Liver biopsy - both percutaneous and laparoscopic
  9. Laser therapy of gastrointestinal lesions (Nd - YAG lasers)

LICENSING AND  
CERTIFICATIONS:

1. New York City and State Teachers License - 1968
2. New York City and State Guidance Counselors License - 1970
3. E.C.F.M.G. - July 1979 #297-538-1
4. Fifth Pathway Program Diploma - 1980
5. Federal Licensing Exam December, 1981 #000030221
6. New York State License - 1981 #149501 (DEA #AC1610066)
7. State of Florida License - 1982 #41193
8. Advanced Cardiac Life Support Certification - 1984, 1986, 1988
9. State of New Jersey License - 1984 #43828 (DEA #AC2598437, CDS #D39183)
10. State of Connecticut - 1985#26298 (DEA #AC2598437 - CSR #13306)

SOCIETY AFFILIATIONS:

1. American College of Physicians 1980 - 1985
2. President House Staff Lutheran Medical Center 1982
3. American Gastroenterology Association 1983 - 1985
4. American College of Gastroenterology 1983 - 1985,
- 1990 - present
5. The Stamford Medical Society 1985 - present
6. The Fairfield County Medical Association 1985 - present
7. The Connecticut State Medical Society 1985 - present
8. American Medical Association Physician Recognition Award 1988
9. American Medical Association 1990 - present

STAFF APPOINTMENTS:

1. The Stamford Hospital, Stamford, Connecticut, The Department of Medicine Division of Gastroenterology, 1985 - present
2. Instructor in Clinical Medicine College of Physicians & Surgeons Columbia University 1998 - present

COMMITTEES:

1. Saint Joseph Medical Center Utilization Review Committee 1986, 1988
2. Board of Directors, St. Joseph Medical Center Physicians IPA Alliance for Health 1997 - 1998
3. St. Joseph Medical Center Disaster Committee 1987
3. St. Joseph Medical Center Critical Care Unit Committee 1987, 1990
4. St. Joseph Medical Center Family Practice Teaching

- Certificate 1987 - present
- 5. St. Joseph Medical Center The Medical Education Health Sciences Library Committee - 1989
- 7. St. Joseph Medical Center Laser Committee - 1989
- 8. The Stamford Hospital Pharmacy and Therapeutic Committee 1986 - present
- 9. The Stamford Hospital Institutional Review Committee 1986 - 1994

PRIVATE PRACTICE:

Specializing in Gastroenterology and Hepatology  
80 Mill River Street  
Suite 1100  
Stamford, Connecticut 06902  
(203) 348-5818

PUBLICATIONS:

Endoscopic Closure of a Gastropulmonary Fistula by Injection with Gax Collagen. J. Sorokin, R. Cirillo. Abstracts submitted to A/S/G/E Gastrointestinal

Endoscopy

Vol. 31, No. 2, 1985.

Awaiting Publication - Lead Article  
Treatment of a Malignant Esophagogastric Pulmonary Fistula with Collagen Implant (GAX). R. Cirillo, J. Sorokin, 1985

REFERENCES:

Gordon D. Benson, M.D.  
Chief, Division of Gastroenterology and Liver Diseases  
Professor of Medicine  
University of Medicine and Dentistry of New Jersey  
Rutgers Medical School at Camden  
(UMDNJ - Rutgers Medical School)  
Cooper Hospital/University Medical Center  
One Cooper Plaza  
Camden, NJ 08103

Stephen M. Levine, M.D.  
Head, Section of Gastroenterology  
Clinical Professor of Medicine  
University of Medicine and Dentistry of New Jersey  
Rutgers Medical School at Camden  
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Cooper Hospital/University Medical Center  
Camden, NJ 08103

**WILLIAM M. PINTAURO, M.D.** 4 Parson's Walk Danlen, CT 06820  
 Phone (203) 655-6341 Fax: (203) 325-0031

**PROFESSIONAL EXPERIENCE:**

1979-Present - Private Gastroenterology Practice  
 80 Morgan Street - Suite 201 - Stamford, CT 06905 - (203) 325-8533  
 1979-Present - Medical Staff Tully Center - Stamford, CT  
 1979-Present - Medical Staff Stamford Hospital - Stamford, CT  
 2001-Present - Diagnostic Endoscopy Center - Stamford, CT

**EDUCATION:**

1966 Fairfield University, Fairfield, CT B.S. Degree  
 1973 University of Madrid, Madrid, Spain M.D. Degree  
 1972 ECFMG  
 1974 FLEX

**POST GRADUATE TRAINING:**

1974-1975 Medical Intern - New Rochelle Hospital, New Rochelle, NY  
 1975-1977 Medical Resident - Yale University Affiliated Program at  
 Norwalk Hospital, Norwalk, CT  
 1977-1979 Fellowship Gastroenterology, Yale Affiliated Program at  
 Norwalk Hospital, Norwalk, CT

**SPECIALTY ELIGIBILITY:**

1977 Internal Medicine  
 1979 Gastroenterology

**PUBLICATIONS:**

*Frequency of Proctoscopy in Hospitalized Patients Undergoing Barium Enema.*  
 Donaldson, R., Berenweig, H., Brand, M., Issa, W., Pintauro, W.  
 Abstract: West Haven V.A. Hospital, Yale University Department of Medicine,  
 New Haven, 1978.  
*Fecal Micro Flora and Steroid Excretion in Colon Cancer and Normal Subjects.*  
 Floch, M., Moskovitz, M., Pintauro, W., Ramos, R.  
 Abstract World Congress of Gastroenterology, Madrid, Spain. June 1978.  
*Silver Stool Sign.* Ong, Pintauro, W. Jama, November 1979.

**PROFESSIONAL MEMBERSHIPS:**

Connecticut State Medical Society

**LICENSES:**

1975 State of Maine  
 1976 State of New York  
 1977 State of Connecticut

**PERSONAL HISTORY:**

**Born:** New York, New York - February 25, 1945  
**Married:** Krysia Marie - December 16, 1972  
**Children:** Sarah Margaux - November 20, 1978  
 Christopher William - May 10, 1980  
 Stefanie Claire - May 27, 1987

**Neda Khaghan M.D.**  
500 West Putnam Avenue Suite 100  
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**PROFESSIONAL EXPERIENCE**

Gastroenterologist - The Center for Gastrointestinal Medicine of Fairfield and Westchester  
8/1/01 - Present

**EDUCATION**

St. Luke's/Roosevelt Hospital, Columbia College of Physicians & Surgeons New York, NY  
7/1/98 - 7/31/2001  
Gastroenterology Fellowship  
Hepatology and Transplant Medicine Training Mount Sinai Hospital  
Honors: Howard J. Eddy Scholarship Award  
New York Society Gastrointestinal Endoscopy January 2000

Mount Sinai Hospital New York, NY  
7/1/95 - 6/30/96 Internship, Internal Medicine  
7/1/96 - 6/30/98 Residency, Internal Medicine  
Appointments: Department of Medicine  
Teaching Assistant, 7/1/96-present

Mount Sinai School of Medicine New York, NY  
6/1/91 - 5/19/95 Degree: M.D. 5/19/95  
Honors: Hyman Scholar 6/1/93 - 6/1/94

New York University New York, NY  
6/1/87 - 6/1/91 Degree: Bachelor of Arts June 1991  
Major: Biology Minor: Mathematics  
Honors: Dean's List 6/1/88 - 6/1/90  
Dean's Circle 6/1/90-6/1/91  
Trustees' Scholar 6/1/87-6/1/91  
Loftman Scholar 6/1/87-6/1/91

**HOSPITAL APPOINTMENTS**

8/1/01 - Present Assistant Attending  
Greenwich Hospital, Greenwich, CT  
06/03/04 - Present Clinical Assistant Professor  
New York Medical College

**LICENSURE**

Board Certified in Gastroenterology 11/01  
New York State Medical License No. 203379, 7/1/96  
~~Diplomate in Internal Medicine No. 182347 1998~~  
Connecticut State Medical License No. 039573 6/1/01

**SOCIETY MEMBERSHIPS**

American Society for Gastrointestinal Endoscopy 7/1/98-present  
American Gastrointestinal Society 7/1/98-present

**Home Address**

157 Jonathan Drive  
Stamford, CT 06903

**Birthdate:** June 28, 1969

**RESEARCH AND PUBLICATIONS**

Jonathan D. Marmor, MD, Piera A. Merlini, MD, Samin K. Sharma, MD, FACC, Neda Khaghan, MD, Sabino R. Torre, MD, Douglas H. Israel, MD, Diego Ardissino, MD, John A. Ambrose, MD, FACC. "Thrombin Generation in Human Coronary Arteries Following Percutaneous Transluminal Balloon Angioplasty." J Am Coll Cardiology. 1994 Nov 15; 24(6):1484-91.

Health Related Quality of Life in patients Treated with Cyclosporine for Severe Ulcerative Colitis: A Comparison Between Patients With and Without Colectomy. Abstract presented at the Digestive Disease Week May 1997. In collaboration with Anthony Weiss, MD, Mount Sinai Hospital, Department of Gastroenterology.

Neda Khaghan, MD, Peter R. Holt, MD. "Peptic Disease in Elderly Patients." Canadian Journal of Gastroenterology. 2000 Dec; 14 (11):922-928.

FELICE R. ZWAS, M. D.  
Curriculum Vitae

Home Address

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Office Address

500 W. Putnam Ave  
Greenwich, CT 06830  
(203) 863-2900

Date of Birth

July 30, 1955

Place of Birth

Brooklyn, NY

Education

- 1976 B.A. Barnard College, Columbia University New York, NY  
1980 M.D. Columbia College of Physicians & Surgeons New York, NY

Postdoctoral Training

- 1980-1981 Intern in Medicine, Columbia Presbyterian Hospital, New York, NY  
1981-1983 Resident in Medicine, Columbia Presbyterian Hospital, New York, NY  
1983-1984 Clinical Fellowship, Gastroenterology, Beth Israel Hospital, Boston, MA  
1984-1985 Research Fellowship, Gastroenterology, Beth Israel Hospital, Boston, MA

Academic Appointments

- 1985-1988 Instructor in Medicine, State University of New York, Downstate Medical Center, Brooklyn, NY  
1993-1996 Clinical Instructor, Yale University School of Medicine, New Haven, CT  
1996- Assistant Clinical Professor, Yale University School of Medicine, New Haven, CT

Hospital Appointments

- 1985-1988 Assistant Attending Physician, Department of Internal Medicine, The Long Island College, Brooklyn, NY  
1988- Assistant Attending Physician, Department of Internal Medicine, Greenwich Hospital, Greenwich, CT



Felice R. Zwas, M.D.

Page 2

Professional Appointments

1985-1988	Staff Gastroenterologist, The Long Island College Hospital, Brooklyn, NY
1985-1988	Medical Director, Alcoholic Detoxification Center, The Long Island College Hospital, Brooklyn, NY
1992-1994	Member of Patient Care Committee, The American College of Gastroenterology
1992-1994	Member Professional Advisory Board, Critical Care of America
1993-	Medical Advisor, Bread & Roses AIDS Hospice
1994-1996	Member of Continuing Medical Education Advisory Committee, Clinical Communications, Inc.

Licensure and Certification

1980	National Board of Medical Examiners
1983	American Board of Internal Medicine
1984	Massachusetts License Registration #53718
1985	New York License Registration #162231-1
1986	American Board of Internal Medicine, Gastroenterology
1988	State of Connecticut License Req. #028878 (expiration: 7-31-06)

Awards and Honors

1973-1976	Dean's List, Barnard College
1976	Magna Cum Laude at Barnard College Phi Beta Kappa
1980	Alpha Omega Alpha American Women's Medical Association Award
1993	Who's Who in Connecticut
1994	Who's Who in the East
1995	Who's Who in the World
2001	Life Member National Registry of Who's Who

Scientific Societies

1983	American Gastroenterological Association
1985	Brooklyn Gastroenterology Association
1986	American College of Gastroenterology (Fellow)
1987	American Society of Gastroenterology
1987	American Public Health Association
1988	Connecticut State Medical Society
1990	American Society for Laser Medicine and Surgery

Felice R. Zwas, M.D.  
Page 3

Teaching Activities

Dec 1988 Critical Care Committee, Greenwich Hospital  
Jan 1989 Library Committee, Greenwich Hospital  
Jan 1990 Pharmacy & Therapeutics Committee, Greenwich Hospital  
Jan 1992 Residency Evaluation Committee, Greenwich Hospital  
Jan 1992- Residency Selection Committee, Greenwich Hospital

Major Research Interests

Scanning electron microscopy in the diagnosis of dysplasia in Barrett's epithelium  
Gastrointestinal problems in women  
Gastrointestinal problems in AIDS patients

Invited Lectures

"Gastrointestinal and Hepatobiliary Manifestation of  
H.I.V.": AIDS: Controversial Trends and Treatment, December 1, 1993.  
"PERSPECTIVE IN AIDS", Program Developer, Greenwich Hospital, December 2, 1993  
"Hepatitis A, B, & C", International Hepatitis Foundation, June 21, 1995.  
"Barrett's Metaplasia as a Complication of GERD", American College of Gastroenterology 1995  
Regional Postgraduate Course, September 1995.

FELICE R. ZWAS, M.D.  
BIBLIOGRAPHY

Zwas F, Shields HM, Doos W, Antonioli D, Goldman H, Spechler S: Scanning Electron Microscopy of Barrett's Esophagus and its Correlation with Light Microscopy and Mucin Stains. (Abstract) *Gastroenterology* 88:1644, 1985.

Zwas F, Shields HM, Doos W, Antonioli D, Goldman H, Ransil B, Spechler S: Scanning Electron Microscopy of Barrett's Esophagus and its Correlation with Light Microscopy and Mucin Stains. *Gastroenterology* 90:1932-1941, 1986.

Zwas F, Lyon DT, Rosen DR: Clinical Significance of Fecal Occult Blood Loss in the the Alcoholic. (Abstract) *Am J Gastro* 82:949, 1987.

Shields HM, Zwas F, Antonioli D, Doos W, Kim S, Spechler S: Detection of Unique Surface Cell. *Gastroenterology* 96:568, 1989. *Gastroenterology* 96:568, 1989.

Zwas F, Lyon DT: Endometriosis: An Important Condition in Clinical Gastroenterology. *Digestive Disease and Sciences* 36:353-364, 1991.

Zwas F, Book Review: Kotler D, ed. *Gastrointestinal and Nutritional Manifestations of the Acquired Immunodeficiency Syndrome*. *Gastroenterology* 02:737, 1992.

Worner TM, Zeller B, Schwarz H, Zwas F, Lyon DT: Acupuncture Fails to Improve Treatment Outcome in Alcoholics. *Drug and Alcohol Dependence* 30:169-173, 1992.

Cimis R, Gueft B, Rothstein R, Zaiman H, Zwas F: Editor: *Photographic Case Studies in Gastroenterology, Diagnostic Tests for the Practitioner*. August 1992.

Habif T, Zwas F: Editor: *Photographic Case Studies in General Medicine, Diagnostic tests for the Practitioner*. November 1992.

Shields HM, Zwas F, Antonioli D, Doos W, Kim S, Spechler S: Detection by Scanning Electron Microscopy of a Distinctive Esophageal Surface Cell at the Junction of the Squamous and Barrett's Epithelium. *Digestive Disease and Sciences* 38:97-108, 1993.

Zwas F: *Photographic Case Studies in Gastrointestinal Disease, Diagnostic Tests for the Practitioner*. December 1993.

Coffey D, Florakis G, Habif T, Jenkyn L, Neeson F, Vredenburg J, Zaiman H, Zwas F: *Photographic Case Studies in Emergency Medicine, Diagnostic Tests for the Practitioner*. December 1993.

Zwas F, Bonheim N, Berken C, Gray S: Importance of Ileoscopy During Colonoscopy. *Gastrointestinal Endoscopy* 40:89-91, 1994.

Boch JA, Antoniolo D, Trier JS, Zwas F, Shields HM: Cytokeratin Expression in Barrett's Epithelium. (Abstract) *Gastroenterology* 106:1018, 1994.

Cirillo N, Zwas F: Ursodeoxycholic Acid in the Treatment of Cholestatic Liver Disease. *Am J Gastro* 89:1447-52, 1994.

Zwas F, Bonheim N, Berken C, Gray S: Diagnostic Yield of Routine heal Intubation. (Abstract) *Am J Gastro* 89:1684, 1994.

El-Serag H, Zwas F, Cirillo N: Colonic Mucosal Abnormalities Associated with Bowel Preparations. (Abstract) *Gastrointestinal Endoscopy* 41:319, April 1995.

Kamradt J, Zwas F, Eisen R: Ileoscopy in the Evaluation of Diarrhea in Patients with HIV Infection. (Abstract) *Gastroenterology* 108:A19, April 1995.

Shields HM, Sawhney PA, Zwas F, Boch JA, Kim S, Goran D, Antoniolio D: Scanning Electron Microscopy of the Human Esophagus: Application to Barrett's Esophagus, A Precancerous Lesion. *Microscopy Research and Technique*, 31:248—256, June 1995.

Mickley D, Greenfeld D, Quinlan D, Roloff P, Zwas F: Abnormal Liver Enzymes in Outpatients with Eating Disorders. Submitted and Accepted. *The International Journal Of Eating Disorders*. July 1995.

Seraly M, Vredenburg J, Zwas F: Immunocompromised Patients, A Case Study Approach: Pearls and Pitfalls. Volume 1, August 1995.

Zwas F, Bonheim N, Berken C, Gray S: Diagnostic Yield of Routine Ileoscopy. *Am J. Gastro* 90:1441-1443, September 1995.

Cimis R, Santos M, Gordon S, Gueft B, Rothstein R, Zaiman Zwas F: Color Atlas of Infectious Disease. Volume 1. October 1995.

Seraly M, Vredenburg J, Skowron G, Zwas F: Immunocompromised Patients, A Case Study Approach. Pearls and Pitfalls. Volume 2, December 1995.

Zwas F, Lyon DT: Occult Bleeding in the Alcoholic. *Am J Gastro* 91:551—553, March 1996.

El-Serag H, Zwas F, Cirillo N, Eisen R: Fulminant Herpes Colitis in a Patient with Crohn's Disease. *Journal of Clinical Gastroenterology* 22:220—223, April 1996.

Worth L, Vredenburg J, Zwas F, Seraly M, Handa S: Immunocompromised Patients, A Case Study Approach. Pearls and Pitfalls. Volume 3, April 1996.

Zwas F, Cirillo N, El-Serag H, Eisen R: Colonic Mucosal Abnormalities Associated with Oral Phosphate Solution. *Gastrointestinal Endoscopy*, 43:463—466, May 1996.

Cirillo N, Zwas F, Lee W, Eisen R: Utility of Liver Biopsy with Serologically Negative Chronic Transaminase Elevations. (Abstract) Submitted and Accepted. *American College of Gastroenterology*. July 1996

El-Serag H, Zwas F, Bonheim N, Cirillo N, Appel G: The Renal and Urologic Complications of Inflammatory Bowel Disease. Submitted and Accepted. *Inflammatory Bowel Disease*. November 1996.

Boch J, Shields H, Antonioli D, Zwas F, Sawhney R, Trier J: Distribution of Cytokeratin Markers in Barrett's Specialized Columnar Epithelium. *Gastroenterology* 112:760-765, March 1997.

Zwas F, Cirillo N, Cihak W, Altmeyer V: Metastatic Breast Cancer Mimicking Colonic Crohn's Disease. (Abstract) *The American Journal of Gastroenterology*. July 1997.

Cirillo N, Zwas F: Clinical Usefulness of CCK Stimulated Gallbladder Ejection Fraction (CCK-EF) Determination in Patients with Chronic Biliary Colic. (Abstract) *The American Journal of Gastroenterology*. July 1997.

Colucci S, Cirillo N, Zwas F: A Retrospective Study of Ileocecal Valve Adenocarcinomas. (Abstract) *The American Journal of Gastroenterology* 94:2669, September 1999.

Iton A, Zwas F: Clinical Vignette: ECG Changes in Esophageal Disease. (Abstract) *The American Journal of Gastroenterology* 94:2711, September 1999.

Zwas F, Brown JH, Berken C, Bonheim N: Comparison of Surveillance Colonoscopy in Patients with and without a Family History of Colon Cancer or Polyps. (Abstract) *The American College of Gastroenterology* 493:2555, September 2000.

Horne NS, Zwas F, Cirillo N, Parrish A: A Retrospective Analysis of Endoscopic Treatment in Patients with Symptomatic Schatzki's Rings. (Abstract) *The American Journal of Gastroenterology* 96:S15, September 2001.

Cirillo N, Zwas F, Horne NS: Subtle Schatzki's Rings Identified Only During Retroflexion: A Novel Approach to Diagnosis and Treatment in Patients with Chronic Dysphagia. (Abstract) *The American Journal of Gastroenterology* 96:S8, September 2001.

Shields, HM, Rosenberg SJ, Zwas F, Ransil BJ, Lembo AJ, Odze R: Prospective Evaluation of Multilayered Epithelium in Barrett's Esophagus. *The American Journal of Gastroenterology* 96:3268, December 2001.

Horne N, Cirillo, N, Zwas, F: Evaluation of the Safety and Efficacy of Needle Knife Electrocautery Used in the Treatment of Symptomatic Schatzki Rings. (Abstract) *The American College of Gastroenterology* 253:503, October 2002.

Zwas F, Cirillo N, Tran D: A New Therapeutic Modality for Symptomatic Schatzki Rings: Disrupting the Ring Using Only the Retroflexed Upper Endoscope. (Abstract) *The American College of Gastroenterology* 99:S9, October 2004.

Nelson A. Bonheim, M.D.  
Curriculum Vitae

Home Address

12 Innis Lane  
Old Greenwich, CT 06870

Office Address

500 West Putnam Avenue  
Greenwich, CT 06830  
203-863-2900

Date of Birth

August 30, 1942

Place of Birth

Jackson Heights, NY

Education

1963 B.A. Lafayette College, Easton Pennsylvania  
1965 M.S. Adelphi University, Garden City, Long Island, New York  
1970 M.D. Chicago Medical School, Chicago, Illinois

Postdoctoral Training

1970-1971 Intern in Medicine, The Bronx Municipal Hospital Center,  
Albert Einstein College of Medicine, Bronx, New York  
1971-1972 Resident in Medicine, The Bronx Municipal Hospital Center,  
Albert Einstein College of Medicine, Bronx, New York  
1972-1973 Chief Resident in Medicine (Assistant Instructor), The Bronx  
Municipal Hospital Center, Albert Einstein College of Medicine,  
Bronx, New York  
1973-1975 Fellow in Medicine (Gastroenterology) , Cornell Medical School,  
New York Hospital, New York, NY (Assistant Physician)

Academic Appointments

1978- Assistant Clinical Professor, Yale University School  
of Medicine, New Haven, Connecticut

Hospital Appointments

1975- Attending Physician, Greenwich Hospital, Greenwich, Connecticut  
1976- Section Head, Department of Gastroenterology,  
Greenwich Hospital

Nelson A. Bonheim, M.D.

Page 2

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Licensure and Certification

1971	National Board of Medical Examiners
1971	New York License Registration #110622-1
1973	American Board of Internal Medicine
1975	State of Connecticut License Reg #17080 (expiration: 8-31-06)
1975	American Board of Internal Medicine, Gastroenterology

Awards and Honors

1969	Alpha Omega Honor Society
1975	Crohn's & Colitis Foundation of America, Inc. Fairfield/Westchester Chapter, Co-Founder
1975-1990	Crohn's & Colitis Foundation of America, Inc. Fairfield/Westchester Chapter, Scientific Advisor for Chapter Medical Advisory Committee
1988	Crohn's & Colitis Foundation of America, Inc. Fairfield/Westchester Chapter, Humanitarian of the Year Award
1990-1992	Crohns & Colitis Foundation of America, Inc. Fairfield/Westchester Chapter, Chairman of the Board
1998-	Crohn's & Colitis Foundation of America, Inc. Fairfield/Westchester Chapter, Co-President

Scientific & Professional Societies

1975-	Connecticut State Medical Society
1975-	Fairfield County Medical Society
1975-	American Medical Association
1975-	American College of Physicians
1976-	American College of Gastroenterology (Fellow)
1976-	American Society for Gastrointestinal Endoscopy
1977-	American Gastroenterological Association
1979-	American College of Physicians (Fellow)
1985-	American Society for Laser Medicine and Surgery (Fellow)

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BIBLIOGRAPHY  
Original Articles  
Nelson A. Bonheim, M.D.

---

Parahemiurus Apeltae .New Species (Trematoda: Hemiuridae) From The Four Spined  
Stickleback Apeltes Quadracus  
By: Nelson A. Bonheim Thesis, 31 pages, 1965.

A Survey of the Esophagus of the Mongolian Gerbil  
By: Nelson A. Bonheim, B.S. and Edward W. Milhouse, Jr., Ph.D. The  
Chicago Medical School Quarterly, Vol. 26, no. 2 1-2, 6 pages, 1970.

Lactic Acidosis in Diabetic Patients  
By: Milford Fulop M.D., Henry D. Hoberman, Ph.D., Joel H. Rascoff, M.D., Nelson A.  
Bonheim, M.D., Neil P. Dreyer, M.D. and Hyman Tannenbaum, M.D. Archives of Internal  
Medicine, Volume 136, 13 pages. 1976.

Hyposmolar Coma Complicating Intraarterial Perfusion of Vasopressin to Control Variceal  
Bleeding  
By: Nelson A. Bonheim, M.D., F.A.C.G., Raymond Anton, M.D. Submitted for publication to  
The American Journal of Gastroenterology. July 1977.

Endoscopic Therapy of Gastrointestinal Hemangiomas and Angiodysplasia  
By: Nelson A. Bonheim, M.D., F.A.C.G. The American Journal of Gastroenterology, Volume 80,  
Number 9, page 727. September 1985.

Hemolytic Anemia Associated with the Use of Omeprazole  
By: James V. Joy, M.D., David R. Marks, M.D., and Nelson A. Bonheim, M.D., F.A.C.P.  
American Journal of Gastroenterology, Volume 86, Number 2, page 217. February 1991.

Importance of Ileoscopy During Colonoscopy  
By: Felice Zwas, M.D. Nelson Bonheim, M.D., Clifford Berken, M.D., and Stephen Gray, M.D.  
Gastrointestinal Endoscopy, Volume 40, Number 1:89-91. January/February 1994.

Diagnostic Yield of Routine Ileal Intubation  
By: Felice Zwas, M.D., Nelson Bonheim, M.D., Clifford Berken, M.D. and Stephen Gray, M.D.  
Abstract. The American Journal of Gastroenterology, Volume 89:1684, 1994.

Exploration of the Abdomen During Open and Laparoscopic Cholecystectomy: Incidence of  
Incidental Pathology By: Henry Grant, M.D., Nelson Bonheim, M.D., Steve DeNigras, M.D.,  
and Neil Yeston, M.D. Submitted. Journal of Laparoendoscopy Surgery. April 1995.

Diagnostic Yield of Routine Ileal Intubation  
By: Felice Zwas, M.D., Nelson Bonheim, M.D., Clifford Berken, M.D. and Stephen Gray, M.D.  
The American Journal of Gastroenterology, Volume 90:1441-1443, September 1995.

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Alan Edward Selkin, M.D.

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Office Address:

Personal:

Date of Birth: August 31, 1965  
Place of Birth: New York, New York  
Citizenship: United States of America  
Social Security Number: 111-48-3330

Education:

Great Neck South High School - 1980-1983  
  
The City College of New York - School of  
Biomedical Education  
Degree: Bachelor of Science - June, 1988  
Honors: Cum Laude, Dean's List  
  
New York Medical College  
Degree: Doctor of Medicine - June, 1990

Postgraduate Medical  
Education:

The University of Connecticut Internal Medicine  
Residency Training Program  
Intern and Resident - July, 1990 to June, 1993  
  
The University of Connecticut Gastroenterology  
Fellowship Program  
GI Fellow - July, 1993 to June, 1995

Board Certification:

National Board of Medical Examiners  
Diplomate Parts I, II, and III - #384181  
American Board of Internal Medicine  
Board Certified - #147947  
GI Subspecialty Boards  
Board Certified - #147947

Licensure:

State of Connecticut - #032784  
State of New York - #187338

Professional Societies:

American Gastroenterological Association  
American College of Gastroenterology  
American Medical Association  
American College of Physicians

Publications:

(Presented May 16, 1995,  
Digestive Disease Week, San Diego, CA)

"Stimulated Gallbladder Contraction for Treatment  
of Intraoperative Bile Leaks"

**Christopher A. Holden**

President, Chief Executive Officer and Director

Christopher A. Holden joined AmSurg in October 2007 as President, Chief Executive Officer and Director. Mr. Holden is a healthcare industry veteran of more than 21 years, engaged during most of his career directly in multi-facility and multi-market healthcare management. Prior to joining AmSurg, Mr. Holden served as Senior Vice President and a Division President of Triad Hospitals, Inc., of which Mr. Holden was a founding team member and officer in May 1999. From August 1994 until May 1999, Mr. Holden held several officer positions with Columbia/HCA Healthcare Corporation. Mr. Holden received his Bachelor of Science degree in Health Policy and Administration from The University of North Carolina and his Juris Doctorate and Masters in Healthcare Administration degrees from Washington University in St. Louis.

**Robert McCullough**  
Vice President of Development

Robert McCullough joined AmSurg in July 2001 as Vice President, Development. Rob has held various management positions in acquisitions and partnership development of 15 years.

**Claire M. Gulmi**

Executive Vice President, Chief Financial Officer, Secretary and Director

Claire M. Gulmi joined AmSurg in September 1994 as Vice President and Chief Financial Officer. Ms. Gulmi became Senior Vice President in March 1997, Secretary in December 1997, a Director in May 2004 and Executive Vice President in February 2006.

**Phillip A. Clendenin**

Senior Vice President, Corporate Services and Chief Compliance Officer

Phillip A. Clendenin joined AmSurg in March 2009 as Senior Vice President, Corporate Services. Mr. Clendenin has served in various positions in health care for more than two decades. Prior to joining AmSurg, he held management positions with Community Health Systems, Triad Hospitals, HCA and National Medical Enterprises. Clendenin received his B.S. in business administration from the University of Tennessee at Martin, and holds a master's degree in health administration from Washington University School of Medicine.

**Billie A. Payne, R.N.**  
Senior Vice President, Operations

Billie A. Payne joined AmSurg in 1995 as a Director of Operations. She came to the company after managing a large cardiology practice for more than a decade. Since joining the company, she has served in several functions in Operations including Vice President of one of the company's major divisions. She was named Senior Vice President of Operations in 2007.

Attachment H

STATE OF CONNECTICUT

Department of Public Health

LICENSE

License No. 0301

Outpatient Surgical Facility

In accordance with the provisions of the General Statutes of Connecticut Section 19a-493:

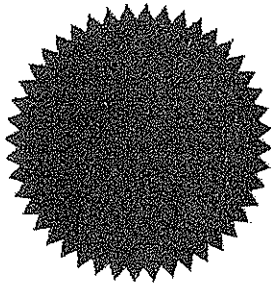
Diagnostic Endoscopy, LLC of Stamford, CT, d/b/a Diagnostic Endoscopy, LLC is hereby licensed to maintain and operate an Outpatient Surgical Facility.

**Diagnostic Endoscopy, LLC** is located at 778 Long Ridge Road, Stamford, CT 06902.

This license expires **March 31, 2013** and may be revoked for cause at any time.

Dated at Hartford, Connecticut, April 1, 2011. RENEWAL.

Waiver Sec. 19-13-D56 (b)(D)(1) exp: n/a  
Waiver Sec. 19-13-D56 (b)(D)(5) exp: n/a  
Waiver Sec. 19-13-D56 (b)(E)(4) exp: n/a  
Waiver Sec. 19-13-D56 (b)(E)(8) exp: n/a  
Waiver Sec. 19-13-D56 (b)(F)(1) exp: n/a  
Waiver Sec. 19-13-D56 (b)(F)(2) exp: n/a  
Waiver Sec. 19-13-D56 (b)(G)(1) exp: n/a  
Waiver Sec. 19-13-D56 (b)(J)(1)(c) exp: n/a



*Jewel Mullen*

Jewel Mullen, MD, MPH, MPA  
Commissioner

**Attachment I**  
Financial Attachment I

<b>NET PATIENT REVENUE</b>											
Non-Government	\$4,748,310	\$0	\$4,985,725	\$0	\$5,135,297	\$0	\$5,135,297	\$0	\$5,288,356	\$0	\$5,288,356
Medicare	\$715,967	\$0	\$751,135	\$0	\$773,669	\$0	\$773,669	\$0	\$796,879	\$0	\$796,879
Medicaid and Other Medical Assistance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Government	\$5,105	\$0	\$5,360	\$0	\$5,521	\$0	\$5,521	\$0	\$5,687	\$0	\$5,687
Total Net Patient Patient Revenue	\$5,469,781	\$0	\$5,742,220	\$0	\$5,914,487	\$0	\$5,914,487	\$0	\$6,091,922	\$0	\$6,091,922
<b>Other Operating Revenue</b>											
Revenue from Operations	\$0	\$0	\$5,742,220	\$0	\$5,914,487	\$0	\$5,914,487	\$0	\$6,091,922	\$0	\$6,091,922
<b>OPERATING EXPENSES</b>											
Salaries and Fringe Benefits	\$1,472,072	\$0	\$1,545,623	\$0	\$1,591,992	\$0	\$1,591,992	\$0	\$1,639,752	\$0	\$1,639,752
Professional / Contracted Services	\$429,139	\$0	\$450,596	(\$45,060)	\$484,114	(\$46,411)	\$437,703	\$478,098	(\$47,804)	\$430,234	\$430,234
Supplies and Drugs	\$461,628	\$0	\$484,709	(\$96,942)	\$489,261	(\$99,850)	\$389,401	\$514,228	(\$102,846)	\$411,383	\$411,383
Bad Debts	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Operating Expense	\$649,164	\$0	\$681,622	(\$102,249)	\$702,071	(\$105,311)	\$596,760	\$723,133	(\$108,470)	\$614,663	\$614,663
Subtotal	\$3,011,953	\$0	\$3,162,551	(\$244,245)	\$3,257,427	(\$251,572)	\$3,005,855	\$3,355,150	(\$259,119)	\$3,096,031	\$3,096,031
Depreciation/Amortization	\$75,913	\$0	\$66,635	\$0	\$42,476	\$0	\$42,476	\$31,857	\$0	\$31,857	\$31,857
Interest Expense	\$67,259	\$0	\$50,444	\$0	\$37,893	\$0	\$37,893	\$28,375	\$0	\$28,375	\$28,375
Lease Expense	\$273,525	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Operating Expenses	\$3,428,250	\$0	\$3,269,630	(\$244,245)	\$3,337,737	(\$251,572)	\$3,086,164	\$3,415,382	(\$259,119)	\$3,156,263	\$3,156,263
Income (Loss) from Operations	\$2,040,531	\$244,245	\$2,472,591	\$244,245	\$2,576,750	\$251,572	\$2,828,323	\$2,676,540	\$259,119	\$2,935,659	\$2,935,659
Non-Operating Income	\$39,838	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Income before provision for income taxes	\$2,080,369	\$244,245	\$2,472,591	\$244,245	\$2,576,750	\$251,572	\$2,828,323	\$2,676,540	\$259,119	\$2,935,659	\$2,935,659
Provision for income taxes	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Income	\$2,080,369	\$244,245	\$2,472,591	\$244,245	\$2,576,750	\$251,572	\$2,828,323	\$2,676,540	\$259,119	\$2,935,659	\$2,935,659
Retained earnings, beginning of year	\$7,129,710	\$2,324,614	\$4,552,960	\$2,324,614	\$4,552,960	\$2,324,614	\$4,797,204	\$7,129,710	\$2,576,186	\$7,625,527	\$7,625,527
Retained earnings, end of year	\$9,806,250	\$2,835,305	\$4,806,250	\$2,835,305	\$4,806,250	\$2,835,305	\$5,129,710	\$7,625,527	\$2,835,305	\$10,561,186	\$10,561,186
FTEs	17	17.5	17.5	0	18	0	18	18.5	0	18.5	18.5
Procedures	9,800	10,290	10,290	0	10,599	0	10,599	10,917	0	10,917	10,917

\*Volume Statistics:  
Provide projected inpatient and/or outpatient statistics for any new services and projected inpatient and/or outpatient statistics for any existing services which will change due to the proposal.



Financial Statements: Diagnostic Endoscopy

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04/25/12  
Cash Basis

**Diagnostic Endoscopy, L.L.C.  
Profit & Loss  
January 2009 through December 2011**

	Jan - Dec 09	Jan - Dec 10	Jan - Dec 11	TOTAL
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
4010 • Rent Income	42,146.28	0.00	0.00	42,146.28
4011 • Electric PM	8,638.02	0.00	0.00	8,638.02
4035 • Fee Refunds	550.00	0.00	0.00	550.00
4040 • Fees				
4070 • Patient Fees - Pre 9/1/08	19,846.59	3,027.59	720.97	23,595.15
4090 • Patient Fees - Post 9/1/08	4,582,703.37	4,907,611.87	5,468,060.37	14,958,375.61
<b>Total 4040 • Fees</b>	<b>4,602,649.96</b>	<b>4,910,639.46</b>	<b>5,468,781.34</b>	<b>14,981,970.76</b>
<b>Total Income</b>	<b>4,653,884.26</b>	<b>4,910,639.46</b>	<b>5,468,781.34</b>	<b>15,033,305.06</b>
<b>Gross Profit</b>	<b>4,653,884.26</b>	<b>4,910,639.46</b>	<b>5,468,781.34</b>	<b>15,033,305.06</b>
<b>Expense</b>				
6025 • Advertising	0.00	587.05	0.00	587.05
6030 • Housekeeping	24,558.71	29,912.20	31,190.30	85,661.21
6031 • shredding	1,449.02	1,627.30	1,629.47	4,705.79
6035 • Laundry & Linen	60,385.52	50,838.88	56,715.83	167,940.23
6050 • Professional Fees				
6052 • Accounting	17,425.00	9,600.00	9,600.00	36,625.00
6056 • Consulting	252,089.08	230,410.99	261,424.48	743,934.55
6060 • Legal Fees	60,528.50	33,864.23	16,756.69	101,149.42
6062 • Pharmacist	1,778.00	2,448.00	3,195.00	7,421.00
6063 • office personnel	24,427.50	12,250.00	13,750.00	50,427.50
6050 • Professional Fees - Other	1,480.00	28,245.93	12,825.24	42,551.17
<b>Total 6050 • Professional Fees</b>	<b>347,738.08</b>	<b>316,819.15</b>	<b>317,551.41</b>	<b>982,108.64</b>
6080 • Insurance				
6082 • Liability Insurance	19,980.34	7,856.68	14,012.60	41,849.62
6083 • Disability Insurance	733.62	8,921.77	10,025.40	19,680.79
6084 • Malpractice Insurance	21,133.78	14,063.23	22,988.26	58,185.26
6085 • Work Comp	2,988.08	27,963.84	3,775.62	34,727.54
6086 • health insurance	54,141.24	54,650.93	111,272.58	220,064.76
6087 • Dental	7,616.36	4,893.36	11,400.87	23,910.59
6080 • Insurance - Other	446.30	0.00	-22.59	425.71
<b>Total 6080 • Insurance</b>	<b>107,041.72</b>	<b>118,349.81</b>	<b>173,452.74</b>	<b>398,844.27</b>
6115 • Maintenance Agreements	8,316.00	24,261.56	1,910.00	34,477.56
6117 • Claims Processing	1,648.50	1,754.45	3,043.60	6,346.55
6120 • Bank & ADP Fees	12,475.29	11,443.00	11,295.69	35,213.98
6140 • Contributions	400.00	100.00	225.00	725.00
6150 • Depreciation Expense	20,019.82	39,895.00	49,110.95	109,125.88
6160 • Dues and Subscriptions	7,375.19	7,608.91	20,715.62	35,699.72
6170 • Equipment Rental	75.49	0.00	0.00	75.49
6200 • Interest Expense				
6201 • Construction Loan Interest	12,872.98	13,739.39	10,495.44	37,107.81
6205 • Webster 2010 Construction Loan	0.00	20,808.56	49,122.02	69,939.58
6206 • Webster 2010 Equipment Loan	0.00	1,974.12	6,855.31	8,829.43
6207 • Clifford Berken	1,412.07	1,585.62	766.13	3,883.82
<b>Total 6200 • Interest Expense</b>	<b>14,285.05</b>	<b>38,207.69</b>	<b>67,258.90</b>	<b>119,751.64</b>
6230 • Licenses and Permits	870.00	-97.00	775.00	1,348.00
6240 • Miscellaneous	0.00	1,216.92	0.00	1,216.92
6250 • Postage and Delivery	11,013.27	12,301.23	10,957.20	34,271.70
6300 • Repairs				
6310 • Building Repairs	20,633.74	2,914.28	21,549.81	45,097.83
6320 • Computer Repairs	19,438.68	0.00	0.00	19,438.68
6350 • Equipment Repairs	2,368.80	18,458.75	16,261.50	36,079.45
<b>Total 6300 • Repairs</b>	<b>42,431.22</b>	<b>21,373.03</b>	<b>35,811.61</b>	<b>100,616.86</b>
6340 • Telephone	9,851.15	4,396.08	4,265.65	14,512.78
6341 • Cable	1,260.58	1,733.87	1,786.16	4,780.61
6342 • EFax	2,091.60	2,856.60	2,446.80	7,395.10
6343 • IT & Software	6,187.52	53,055.95	47,491.83	106,735.10
6350 • Travel & Ent				
6360 • Entertainment	2,266.84	4,398.59	3,177.24	9,860.67
6370 • Meals	939.92	1,025.84	4,272.72	6,238.48
6380 • Travel	60.00	26.87	1,117.37	1,203.24
6360 • Travel & Ent - Other	-544.20	0.00	0.00	-544.20
<b>Total 6350 • Travel &amp; Ent</b>	<b>2,742.56</b>	<b>6,448.30</b>	<b>8,667.33</b>	<b>16,768.19</b>
6400 • Utilities				
6430 • Electric	35,199.46	32,673.22	36,471.49	104,344.17
<b>Total 6400 • Utilities</b>	<b>35,199.46</b>	<b>32,673.22</b>	<b>36,471.49</b>	<b>104,344.17</b>
6525 • BioMedical Fees	10,910.37	12,301.64	12,620.64	35,832.65
6631 • Oxygen	6,234.17	6,704.06	9,151.17	22,089.40
6540 • Rent	255,196.64	232,900.01	266,598.47	754,695.12
6550 • Office Supplies	49,156.26	63,040.28	78,987.16	191,183.70
6565 • Payroll - Paychex	1,082,172.82	1,160,670.37	1,268,738.59	3,511,579.78
6630 • Professional Development	0.00	245.00	834.99	1,079.99
6680 • Reference Materials	344.59	2,786.89	-60.95	3,070.53
66900 • Reconciliation Discrepancies	0.00	327.65	-1.30	326.55

Diagnostic Endoscopy, L.L.C.  
Profit & Loss  
January 2009 through December 2011

	Jan - Dec 09	Jan - Dec 10	Jan - Dec 11	TOTAL
6750 • Equipment - Leased				
6751 • olympus lease	132,808.49	181,757.95	273,525.11	588,091.55
6750 • Equipment - Leased - Other	28,475.42	25,679.27	15,734.43	70,789.12
<b>Total 6750 • Equipment - Leased</b>	<b>162,283.91</b>	<b>207,337.22</b>	<b>289,259.54</b>	<b>656,860.67</b>
6770 • Supplies				
6785 • Medical	218,192.69	260,942.76	424,491.44	903,626.89
6790 • Office	201.99	-15.07	0.00	186.92
6770 • Supplies - Other	815.85	-20.58	91.47	886.74
<b>Total 6770 • Supplies</b>	<b>219,210.53</b>	<b>260,907.11</b>	<b>424,582.91</b>	<b>904,700.55</b>
6820 • Taxes				
6840 • Local	0.00	0.00	20.00	20.00
6850 • Property	611.58	4,300.48	12,757.12	17,669.18
6860 • State	520.00	750.00	882.57	2,152.57
6820 • Taxes - Other	-260.00	0.00	0.00	-260.00
<b>Total 6820 • Taxes</b>	<b>881.58</b>	<b>5,050.48</b>	<b>13,659.69</b>	<b>19,591.75</b>
6870 • Payroll Taxes - Fica	90,679.28	96,762.96	33,834.48	221,076.72
6875 • Payroll 401k Contribution	0.00	0.00	32,392.47	32,392.47
6885 • Payroll Paychex Fees	6,625.99	7,243.84	8,893.69	22,803.52
8020 • Refunds				
8021 • Patient Refund	11,959.27	26,540.33	39,926.58	78,426.18
8022 • Insurance refund	8,572.01	16,105.88	11,191.92	35,869.81
8023 • medicare refund	1,621.69	0.00	1,200.97	2,822.66
<b>Total 8020 • Refunds</b>	<b>22,152.97</b>	<b>42,646.21</b>	<b>52,319.47</b>	<b>117,118.65</b>
8030 • Medical drugs				
8031 • propofol	34,002.32	60,710.57	36,269.69	130,982.58
8030 • Medical drugs - Other	103,975.39	123,933.98	317.13	228,226.50
<b>Total 8030 • Medical drugs</b>	<b>137,977.71</b>	<b>184,644.55</b>	<b>36,586.82</b>	<b>359,209.08</b>
<b>Total Expense</b>	<b>2,766,942.67</b>	<b>3,060,021.57</b>	<b>3,401,848.23</b>	<b>9,228,812.47</b>
<b>Net Ordinary Income</b>	<b>1,886,941.59</b>	<b>1,850,817.89</b>	<b>2,086,933.11</b>	<b>5,804,492.59</b>
<b>Other Income/Expense</b>				
<b>Other Income</b>				
7030 • Other Income	0.00	0.00	39,837.81	39,837.81
<b>Total Other Income</b>	<b>0.00</b>	<b>0.00</b>	<b>39,837.81</b>	<b>39,837.81</b>
<b>Other Expense</b>				
SEC 179 Deduction	16,220.00	0.00	26,402.00	42,622.00
SEC179 Deduction - Amortization	0.00	705,935.00	0.00	705,935.00
<b>Total Other Expense</b>	<b>16,220.00</b>	<b>705,935.00</b>	<b>26,402.00</b>	<b>748,557.00</b>
<b>Net Other Income</b>	<b>-16,220.00</b>	<b>-705,935.00</b>	<b>13,435.81</b>	<b>-708,719.19</b>
<b>Net Income</b>	<b>1,870,721.59</b>	<b>1,144,882.89</b>	<b>2,089,368.92</b>	<b>5,095,773.40</b>

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Cash Basis

Diagnostic Endoscopy, L.L.C.  
Balance Sheet Prev Year Comparison

As of December 31, 2011

	Dec 31, 11	Dec 31, 10	\$ Change	% Change
<b>ASSETS</b>				
<b>Current Assets</b>				
Checking/Savings				
1000 - Bank of America	-19.46	12,078.10	-12,097.56	-100.2%
1005 - Webster Bank	216,510.34	186,021.08	28,489.26	15.2%
<b>Total Checking/Savings</b>	<b>216,490.88</b>	<b>208,099.18</b>	<b>16,391.70</b>	<b>8.2%</b>
<b>Total Current Assets</b>	<b>216,490.88</b>	<b>208,099.18</b>	<b>16,391.70</b>	<b>8.2%</b>
<b>Fixed Assets</b>				
1295 - Furniture/Fixtures				
1300 - Property-Equipment	66,893.71	66,893.71	0.00	0.0%
1301 - Medical Equipment	95,947.08	70,126.73	25,820.35	36.8%
1310 - Furniture	27,601.75	27,601.75	0.00	0.0%
1320 - Property-Computers	45,610.45	44,198.70	1,411.75	3.2%
1350 - Accumulated Depreciation	-234,239.04	-208,810.04	-25,429.00	-12.2%
<b>Total 1295 - Furniture/Fixtures</b>	<b>1,893.85</b>	<b>-1.15</b>	<b>1,895.00</b>	<b>156,866.2%</b>
1330 - Leasehold Improvements				
1340 - Accumulated Depreciation - LI	-651,351.88	-501,267.92	-150,083.96	-3.3%
1330 - Leasehold Improvements - Other	1,683,442.59	1,682,441.16	1,001.43	0.1%
<b>Total 1330 - Leasehold Improvements</b>	<b>1,032,090.71</b>	<b>1,081,173.24</b>	<b>-49,082.53</b>	<b>-4.6%</b>
1352 - Software				
1325 - Accumulated Depreciation	-154,738.96	-154,738.96	0.00	0.0%
1353 - Accumulated Amortization	-51,936.00	-51,936.00	0.00	0.0%
1352 - Software - Other	51,936.00	51,936.00	0.00	0.0%
<b>Total 1352 - Software</b>	<b>-154,738.96</b>	<b>-154,738.96</b>	<b>0.00</b>	<b>0.0%</b>
<b>Total Fixed Assets</b>	<b>879,155.70</b>	<b>926,433.13</b>	<b>-47,277.43</b>	<b>-5.1%</b>
<b>Other Assets</b>				
1500 - Rent Deposit	14,733.00	14,733.00	0.00	0.0%
<b>Total Other Assets</b>	<b>14,733.00</b>	<b>14,733.00</b>	<b>0.00</b>	<b>0.0%</b>
<b>TOTAL ASSETS</b>	<b>1,110,379.58</b>	<b>1,141,265.31</b>	<b>-30,885.73</b>	<b>-2.7%</b>
<b>LIABILITIES &amp; EQUITY</b>				
<b>Liabilities</b>				
<b>Current Liabilities</b>				
Accounts Payable				
2000 - Accounts Payable	4,643.59	21,841.07	-17,197.48	-78.7%
<b>Total Accounts Payable</b>	<b>4,643.59</b>	<b>21,841.07</b>	<b>-17,197.48</b>	<b>-78.7%</b>
<b>Total Current Liabilities</b>	<b>4,643.59</b>	<b>21,841.07</b>	<b>-17,197.48</b>	<b>-78.7%</b>
<b>Long Term Liabilities</b>				
Note Payable - Berkeh	6,919.14	13,838.34	-6,919.20	-50.0%
2190 - Webster Construction Refi Loan	143,347.18	186,791.58	-43,444.40	-27.2%
2195 - Webster Construction Loan	729,720.14	877,000.00	-147,279.86	-16.8%
2195 - Webster Equipment Loan	102,343.60	123,000.00	-20,656.20	-16.8%
<b>Total Long Term Liabilities</b>	<b>982,330.26</b>	<b>1,210,629.92</b>	<b>-228,299.66</b>	<b>-18.9%</b>
<b>Total Liabilities</b>	<b>886,973.85</b>	<b>1,232,470.99</b>	<b>-345,497.14</b>	<b>-19.9%</b>
<b>Equity</b>				
3005 - Purchased Membership Interest	-103,787.79	-83,030.23	-20,757.56	-25.0%
3010 - Partners Capital				
3020 - Peter Gardner				
P. Gardner - Capital	-29,418.40	55,988.15	-85,406.54	-152.6%
P. Gardner - Distributions	-258,261.76	-245,663.64	-12,598.12	-5.1%
<b>Total 3020 - Peter Gardner</b>	<b>-287,680.25</b>	<b>-189,675.49</b>	<b>-98,005.76</b>	<b>-51.7%</b>
3025 - Ronald Cirillo				
R. Cirillo - Capital	-19,595.75	5,243.42	-24,839.17	-473.7%
R. Cirillo - Distributions	-74,972.36	-71,315.17	-3,657.19	-5.1%
<b>Total 3025 - Ronald Cirillo</b>	<b>-94,568.11</b>	<b>-66,071.75</b>	<b>-28,496.36</b>	<b>-43.1%</b>
3030 - Stuart Waldstreicher				
S. Waldstreicher - Capital	-29,418.40	55,988.15	-85,406.54	-152.6%
S. Waldstreicher - Distributions	-258,261.76	-245,663.64	-12,598.12	-5.1%
<b>Total 3030 - Stuart Waldstreicher</b>	<b>-287,680.25</b>	<b>-189,675.49</b>	<b>-98,005.76</b>	<b>-51.7%</b>
3035 - William Pintauro				
W. Pintauro - Capital	-24,144.73	28,550.15	-52,694.88	-181.7%
W. Pintauro - Distributions	-162,475.53	-154,548.88	-7,926.65	-5.1%
<b>Total 3035 - William Pintauro</b>	<b>-186,620.26</b>	<b>-124,990.73</b>	<b>-61,629.53</b>	<b>-49.3%</b>
3045 - Nelson Bonheim				
N. Bonheim - Capital	1,828.60	55,322.48	-53,493.88	-98.7%
N. Bonheim - Distributions	-162,475.53	-154,548.88	-7,926.65	-5.1%
<b>Total 3045 - Nelson Bonheim</b>	<b>-160,646.93</b>	<b>-99,226.40</b>	<b>-61,420.53</b>	<b>-62.2%</b>
3050 - Neda Khaghan				
N. Khaghan - Capital	2,690.04	99,394.72	-96,704.68	-97.0%
N. Khaghan - Distributions	-601,850.05	-387,735.57	-214,114.48	-3.7%
<b>Total 3050 - Neda Khaghan</b>	<b>-399,159.01</b>	<b>-288,340.85</b>	<b>-110,818.16</b>	<b>-38.4%</b>
3055 - Alan Selkin				
A. Selkin - Capital	3,193.25	106,577.53	-103,384.28	-97.0%
A. Selkin - Distributions	-312,423.27	-287,180.28	-25,242.99	-5.1%
<b>Total 3055 - Alan Selkin</b>	<b>-309,230.02</b>	<b>-180,602.75</b>	<b>-128,627.27</b>	<b>-62.2%</b>
3060 - Felice Zwas				
F. Zwas - Capital	3,391.89	110,827.79	-107,435.90	-98.0%
F. Zwas - Distributions	-324,736.68	-308,897.79	-15,838.89	-5.1%
<b>Total 3060 - Felice Zwas</b>	<b>-321,344.79</b>	<b>-198,070.00</b>	<b>-123,274.79</b>	<b>-62.2%</b>
<b>Total 3010 - Partners Capital</b>	<b>-2,046,761.62</b>	<b>-1,346,444.56</b>	<b>-700,317.06</b>	<b>-52.0%</b>
3015 - Partners Distributions	110,555.99	110,555.99	0.00	0.0%
3100 - Retained Earnings	83,630.23	83,630.23	0.00	0.0%
<b>Net Income</b>	<b>2,060,966.92</b>	<b>1,144,682.69</b>	<b>935,686.03</b>	<b>81.7%</b>
<b>Total Equity</b>	<b>123,405.73</b>	<b>-91,205.68</b>	<b>214,611.41</b>	<b>235.3%</b>
<b>LIABILITIES &amp; EQUITY</b>	<b>1,110,379.58</b>	<b>1,141,265.31</b>	<b>-30,885.73</b>	<b>-2.7%</b>

## Financial Statements: AmSurg Corp

### Selected Sections from 2011 form 10-K Securities and Exchange Commission Filings

Available at: <http://phx.corporate-ir.net/phoenix.zhtml?c=83089&p=irol-SECText&TEXT=aHR0cDovL2lyLmludC53ZXN0bGF3YnVzaW5lc3MuY29tL2RvY3ViZW50L3YxLzAwMDA4OTU5MzAtMTItMDAwMDEyL3htbC9zdWJkb2N1bWVudC8x>

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#### Item 8. Financial Statements and Supplementary Data

##### REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of  
AmSurg Corp.  
Nashville, Tennessee

We have audited the accompanying consolidated balance sheets of AmSurg Corp. and subsidiaries (the "Company") as of December 31, 2011 and 2010, and the related consolidated statements of earnings, comprehensive income, changes in equity, and cash flows for each of the three years in the period ended December 31, 2011. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of AmSurg Corp. and subsidiaries as of December 31, 2011 and 2010, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2011, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2011, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 24, 2012 expressed an unqualified opinion on the Company's internal control over financial reporting.

/s/ DELOITTE & TOUCHE LLP  
Nashville, Tennessee  
February 24, 2012

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Item 8. Financial Statements and Supplementary Data – (continued)  
AmSurg Corp.  
Consolidated Balance Sheets  
December 31, 2011 and 2010  
(Dollars in thousands)

	2011	2010
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 40,718	\$ 34,147
Accounts receivable, net of allowance of \$18,844 and \$13,070, respectively	93,454	67,617
Supplies inventory	15,039	10,157
Deferred income taxes	2,129	1,509
Prepaid and other current assets	21,875	18,660
Current assets held for sale	-	866
Total current assets	173,215	132,956
Property and equipment, net	144,558	119,167
Investments in unconsolidated affiliates	10,522	-
Goodwill	1,229,298	894,497
Intangible assets, net	15,425	11,361
Long-term assets held for sale	-	7,897
Total assets	<u>\$ 1,573,018</u>	<u>\$ 1,165,878</u>
<b>Liabilities and Equity</b>		
Current liabilities:		
Current portion of long-term debt	\$ 10,800	\$ 6,648
Accounts payable	19,746	15,291
Current income taxes payable	1,796	-
Accrued salaries and benefits	22,224	17,952
Other accrued liabilities	9,088	3,136
Current liabilities held for sale	-	536
Total current liabilities	63,654	43,563
Long-term debt	447,963	283,215
Deferred income taxes	114,167	90,089
Other long-term liabilities	28,131	24,404
Commitments and contingencies		
Noncontrolling interests – redeemable	170,636	147,740
Preferred stock, no par value, 5,000,000 shares authorized, no shares issued or outstanding	-	-
Equity:		
Common stock, no par value, 70,000,000 shares authorized, 31,283,772 and 31,039,770 shares outstanding, respectively	173,187	171,522
Retained earnings	443,058	393,061
Accumulated other comprehensive loss, net of income taxes	-	(515)
Total AmSurg Corp. equity	616,245	564,068
Noncontrolling interests – non-redeemable	132,222	12,799
Total equity	748,467	576,867
Total liabilities and equity	<u>\$ 1,573,018</u>	<u>\$ 1,165,878</u>

See accompanying notes to the consolidated financial statements.

Item 8. Financial Statements and Supplementary Data – (continued)

**AmSurg Corp.**  
**Consolidated Statements of Earnings**  
**Years Ended December 31, 2011, 2010 and 2009**  
(In thousands, except earnings per share)

	2011	2010	2009
Revenues	\$ 786,870	\$ 703,439	\$ 650,330
Operating expenses:			
Salaries and benefits	243,094	211,809	195,960
Supply cost	104,007	91,730	79,029
Other operating expenses	171,759	148,187	134,272
Depreciation and amortization	26,175	24,928	22,353
Total operating expenses	545,035	476,654	431,614
Equity in earnings of unconsolidated affiliates	613	-	-
Operating income	242,448	226,785	218,716
Interest expense	15,347	13,486	7,773
Earnings from continuing operations before income taxes	227,101	213,299	210,943
Income tax expense	35,841	33,791	34,347
Net earnings from continuing operations	191,260	179,508	176,596
Discontinued operations:			
Earnings from operations of discontinued interests in surgery centers, net of income tax	397	3,720	5,456
Loss on disposal of discontinued interests in surgery centers, net of income tax	(1,543)	(2,732)	(702)
Net (loss) earnings from discontinued operations	(1,146)	988	4,754
Net earnings	190,114	180,496	181,350
Less net earnings attributable to noncontrolling interests:			
Net earnings from continuing operations	140,061	128,364	125,855
Net earnings from discontinued operations	56	2,307	3,347
Total net earnings attributable to noncontrolling interests	140,117	130,671	129,202
Net earnings attributable to AmSurg Corp. common shareholders	\$ 49,997	\$ 49,825	\$ 52,148
Amounts attributable to AmSurg Corp. common shareholders:			
Earnings from continuing operations, net of income tax	\$ 51,199	\$ 51,144	\$ 50,741
Discontinued operations, net of income tax	(1,202)	(1,319)	1,407
Net earnings attributable to AmSurg Corp. common shareholders	\$ 49,997	\$ 49,825	\$ 52,148
Earnings per share-basic:			
Net earnings from continuing operations attributable to AmSurg Corp. common shareholders	\$ 1.68	\$ 1.69	\$ 1.66
Net (loss) earnings from discontinued operations attributable to AmSurg Corp. common shareholders	(0.04)	(0.04)	0.05
Net earnings attributable to AmSurg Corp. common shareholders	\$ 1.64	\$ 1.65	\$ 1.71
Earnings per share-diluted:			
Net earnings from continuing operations attributable to AmSurg Corp. common shareholders	\$ 1.64	\$ 1.67	\$ 1.64
Net (loss) earnings from discontinued operations attributable to AmSurg Corp. common shareholders	(0.04)	(0.04)	0.05
Net earnings attributable to AmSurg Corp. common shareholders	\$ 1.60	\$ 1.62	\$ 1.69

Weighted average number of shares and share equivalents outstanding:

Basic	30,452	30,255	30,576
Diluted	31,211	30,689	30,862

See accompanying notes to the consolidated financial statements.

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Item 8. Financial Statements and Supplementary Data – (continued)

AmSurg Corp.

Consolidated Statements of Comprehensive Income

Years Ended December 31, 2011, 2010 and 2009

(In thousands)

	<u>2011</u>	<u>2010</u>	<u>2009</u>
Net earnings	\$ 190,114	\$ 180,496	\$ 181,350
Other comprehensive income, net of income tax:			
Unrealized gain on interest rate swap, net of income tax	515	1,334	1,002
Comprehensive income, net of income tax	190,629	181,830	182,352
Less comprehensive income attributable to noncontrolling interests	140,117	130,671	129,202
Comprehensive income attributable to AmSurg Corp. common shareholders	<u>\$ 50,512</u>	<u>\$ 51,159</u>	<u>\$ 53,150</u>

See accompanying notes to the consolidated financial statements.

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Item 8. Financial Statements and Supplementary Data -- (continued)

AmSurg Corp.  
Consolidated Statements of Changes in Equity  
Years Ended December 31, 2011, 2010 and 2009  
(In thousands)

	AmSurg Corp. Shareholders				Non-Controlling Interests – Redeemable (Temporary Equity)	Total Equity (Permanent)	Net Earnings
	Common Stock Shares	Common Stock Amount	Retained Earnings	Accumulated Other Comprehensive Loss			
Balance at January 1, 2009	31,342	\$ 172,192	\$ 291,088	\$ (2,851)	\$ 2,877	\$ 463,306	\$ 63,202
Issuance of restricted common stock	162	-	-	-	-	-	-
Cancellation of restricted common stock	(14)	(26)	-	-	-	(26)	-
Stock options exercised	15	201	-	-	-	201	-
Stock repurchased	(831)	(12,587)	-	-	-	(12,587)	-
Share-based compensation	-	4,068	-	-	-	4,068	-
Tax benefit related to exercise of stock options	-	2	-	-	-	2	-
Net earnings	-	-	52,148	-	4,065	56,213	125,137
Distributions to noncontrolling interests, net of capital contributions	-	-	-	-	(3,848)	(3,848)	(126,797)
Sale of noncontrolling interest	-	(121)	-	-	-	(121)	947
Acquisitions and other transactions impacting noncontrolling interests	-	-	-	-	2,161	2,161	60,874
Gain on interest rate swap, net of income tax expense of \$646	-	-	-	1,002	-	1,002	-
Balance at December 31, 2009	30,674	163,729	343,236	(1,849)	5,255	510,371	123,363
Issuance of restricted common stock	233	-	-	-	-	-	-
Cancellation of restricted common stock	(25)	(15)	-	-	-	(15)	-
Stock options exercised	158	2,583	-	-	-	2,583	-
Share-based compensation	-	4,869	-	-	-	4,869	-
Tax benefit related to exercise of stock options	-	71	-	-	-	71	-
Net earnings	-	-	49,825	-	4,546	54,371	126,125
Distributions to noncontrolling interests, net of capital contributions	-	-	-	-	(4,844)	(4,844)	(127,193)
Purchase of noncontrolling interest	-	893	-	-	(137)	756	(1,046)
Sale of noncontrolling interest	-	(608)	-	-	434	(174)	614
Acquisitions and other	-	-	-	-	-	-	-

transactions								
impacting noncontrolling								
interests	-	-	-	-	7,545	7,545	25,877	
Gain on interest rate								
swap, net of								
income tax expense of								
\$860	-	-	-	1,334	-	1,334	-	
Balance at December 31,								
2010	31,040	\$ 171,522	\$ 393,061	\$ (515)	\$ 12,799	\$ 576,867	\$ 147,740	
See accompanying notes to the consolidated financial statements.								

Item 8. Financial Statements and Supplementary Data -- (continued)

AmSurg Corp.

Consolidated Statements of Changes in Equity --(continued)

Years Ended December 31, 2011, 2010 and 2009

(In thousands)

AmSurg Corp. Shareholders

	Common Stock Shares	Common Stock Amount	Retained Earnings	Accumulated Other Comprehensive Loss	Non- Controlling Interests – Non- Redeemable	Total Equity (Permanent)	Non- Controlling Interests – Redeemable (Temporary Equity)	Net Earnings
Balance at December 31, 2010	31,040	\$ 171,522	\$393,061	\$ (515)	\$ 12,799	\$ 576,867	\$ 147,740	
Issuance of restricted common stock	277	-	-	-	-	-	-	-
Cancellation of restricted common stock	(1)	(9)	-	-	-	(9)	-	-
Stock options exercised	374	6,872	-	-	-	6,872	-	-
Stock repurchased	(406)	(10,007)	-	-	-	(10,007)	-	-
Share-based compensation	-	6,178	-	-	-	6,178	-	-
Tax benefit related to exercise of stock options	-	649	-	-	-	649	-	-
Net earnings	-	-	49,997	-	10,181	60,178	129,936	<u>\$190,114</u>
Distributions to noncontrolling interests, net of capital contributions	-	-	-	-	(9,502)	(9,502)	(129,979)	-
Purchase of noncontrolling interest	-	195	-	-	(817)	(622)	(788)	-
Sale of noncontrolling interest	-	(1,702)	-	-	439	(1,263)	1,771	-
Acquisitions and other transactions impacting noncontrolling interests	-	-	-	-	122,276	122,276	21,390	-
Disposals and other transactions impacting noncontrolling interests	-	(511)	-	-	(3,154)	(3,665)	566	-
Gain on interest rate swap, net of income tax expense of \$332	-	-	-	515	-	515	-	-
Balance at December 31, 2011	<u>31,284</u>	<u>\$ 173,187</u>	<u>\$443,058</u>	<u>\$ -</u>	<u>\$ 132,222</u>	<u>\$ 748,467</u>	<u>\$ 170,636</u>	

See accompanying notes to the consolidated financial statements.

Item 8. Financial Statements and Supplementary Data -- (continued)

AmSurg Corp.

Consolidated Statements of Cash Flows  
Years Ended December 31, 2011, 2010 and 2009

(In thousands)

	2011	2010	2009
<b>Cash flows from operating activities:</b>			
Net earnings	\$ 190,114	\$ 180,496	\$ 181,350
Adjustments to reconcile net earnings to net cash flows provided by operating activities:			
Depreciation and amortization	26,175	24,928	22,353
Net (gain) loss on sale of long-lived assets	(1,518)	4,243	455
Share-based compensation	6,178	4,869	4,068
Excess tax benefit from share-based compensation	(977)	(200)	(32)
Deferred income taxes	23,623	18,247	14,703
Equity in earnings of unconsolidated affiliates	(613)	-	-
Increase (decrease) in cash and cash equivalents, net of effects of acquisitions and dispositions, due to changes in:			
Accounts receivable, net	(2,122)	713	1,494
Supplies inventory	168	(541)	(60)
Prepaid and other current assets	838	(3,364)	(733)
Accounts payable	(2,205)	(220)	1,289
Accrued expenses and other liabilities	2,329	168	6,666
Other, net	1,433	1,236	1,031
Net cash flows provided by operating activities	243,423	230,575	232,584
<b>Cash flows from investing activities:</b>			
Acquisition of interests in surgery centers and related transactions	(239,223)	(53,690)	(95,826)
Acquisition of property and equipment	(22,170)	(19,275)	(19,930)
Proceeds from sale of interests in surgery centers	7,026	60	1,298
Repayment of notes receivable	-	-	1,666
Net cash flows used in investing activities	(254,367)	(72,905)	(112,792)
<b>Cash flows from financing activities:</b>			
Proceeds from long-term borrowings	288,869	176,619	137,178
Repayment on long-term borrowings	(129,107)	(195,960)	(116,951)
Distributions to noncontrolling interests	(138,724)	(132,110)	(130,855)
Proceeds from issuance of common stock upon exercise of stock options	6,872	2,583	201
Repurchase of common stock	(10,007)	-	(12,587)
Capital contributions and ownership transactions by noncontrolling interests	660	224	1,036
Excess tax benefit from share-based compensation	977	200	32
Financing cost incurred	(2,025)	(4,456)	(17)
Net cash flows provided by (used in) financing activities	17,515	(152,900)	(121,963)
Net increase (decrease) in cash and cash equivalents	6,571	4,770	(2,171)
Cash and cash equivalents, beginning of period	34,147	29,377	31,548
Cash and cash equivalents, end of period	\$ 40,718	\$ 34,147	\$ 29,377
See accompanying notes to the consolidated financial statements.			

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**Item 8. Financial Statements and Supplementary Data – (continued)****AmSurg Corp.****Notes to the Consolidated Financial Statements****1. Summary of Significant Accounting Policies****a. Principles of Consolidation**

AmSurg Corp. (the “Company”), through its wholly owned subsidiaries, owns interests, primarily 51%, in limited partnerships and limited liability companies (“LLCs”) which own and operate ambulatory surgery centers (“centers”). The Company also has majority ownership interests in other limited partnerships and LLCs formed to develop additional centers. The Company does not have an ownership interest in a limited partnership or LLC greater than 51% which it does not consolidate. The Company does have an ownership interest of less than 51% in three of its limited partnerships and LLC’s, one of which it consolidates as the Company has substantive participation rights, and two of which it does not consolidate, as the Company owns 20% of each entity and the Company’s rights are limited to protective rights only. The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries and the consolidated limited partnerships and LLCs. Consolidation of such limited partnerships and LLCs is necessary as the Company’s wholly owned subsidiaries have primarily 51% or more of the financial interest, are the general partner or majority member with all the duties, rights and responsibilities thereof, are responsible for the day-to-day management of the limited partnerships and LLCs, and have control of the entities. The responsibilities of the Company’s noncontrolling partners (limited partners and noncontrolling members) are to supervise the delivery of medical services, with their rights being restricted to those that protect their financial interests, such as approval of the acquisition of significant assets or the incurrence of debt which they are generally required to guarantee on a pro rata basis based upon their respective ownership interests. Intercompany profits, transactions and balances have been eliminated. All limited partnerships and LLCs and noncontrolling partners are referred to herein as partnerships and partners, respectively.

Ownership interests in consolidated subsidiaries held by parties other than the Company are identified and generally presented in the consolidated financial statements within the equity section but separate from the Company’s equity. However, in instances in which certain redemption features that are not solely within the control of the Company are present, classification of noncontrolling interests outside of permanent equity is required. Consolidated net income attributable to the Company and to the noncontrolling interests are identified and presented on the face of the consolidated statements of earnings; changes in ownership interests are accounted for as equity transactions; and when a subsidiary is deconsolidated, any retained noncontrolling equity investment in the former subsidiary and the gain or loss on the deconsolidation of the subsidiary is measured at fair value. Certain transactions with noncontrolling interests are also classified within financing activities in the statements of cash flows.

As further described in note 14, upon the occurrence of various fundamental regulatory changes, the Company would be obligated, under the terms of certain partnership and operating agreements, to purchase the noncontrolling interests related to a substantial majority of the Company’s partnerships. While the Company believes that the likelihood of a change in current law that would trigger such purchases was remote as of December 31, 2011, the occurrence of such regulatory changes is outside the control of the Company. As a result, the noncontrolling interests that are subject to this redemption feature are not included as part of the Company’s equity and are classified as noncontrolling interests – redeemable on the Company’s consolidated balance sheets.

Center profits and losses of consolidated entities are allocated to the Company’s partners in proportion to their ownership percentages and reflected in the aggregate as net earnings attributable to noncontrolling interests. The partners of the Company’s center partnerships typically are organized as general partnerships, limited partnerships or limited liability companies that are not subject to federal income tax. Each partner shares in the pre-tax earnings of the center in which it is a partner. Accordingly, the earnings attributable to noncontrolling interests in each of the Company’s consolidated partnerships are generally determined on a pre-tax basis, and total net earnings attributable to noncontrolling interests are presented after net earnings. However, the Company considers the impact of the net earnings attributable to noncontrolling interests on earnings before income taxes in order to determine the amount of pre-tax earnings on which the Company must determine its tax expense. In addition, distributions from the partnerships are made to both the Company’s wholly owned subsidiaries and the partners on a pre-tax basis.

Investments in unconsolidated affiliates in which the Company exerts significant influence but does not control or otherwise consolidate are accounted for using the equity method. These investments are included as investments in unconsolidated affiliates in the accompanying consolidated balance sheets. The Company’s share of the profits and losses from these investments are reported in equity in earnings of unconsolidated affiliates in the accompanying consolidated statement of earnings. The Company monitors its investments for other-than-temporary impairment by considering factors such as current economic and market conditions and the operating performance of the companies and records reductions in carrying values when necessary.

The Company operates in one reportable business segment, the ownership and operation of ambulatory surgery centers.

**b. Cash and Cash Equivalents**

Cash and cash equivalents are comprised principally of demand deposits at banks and other highly liquid short-term investments with maturities of less than three months when purchased.

**c. Supplies Inventory**

Supplies inventory consists of medical and drug supplies and is recorded at cost on a first-in, first-out basis.

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**Item 8. Financial Statements and Supplementary Data – (continued)****AmSurg Corp.****Notes to the Consolidated Financial Statements –(continued)****d. Prepaid and Other Current Assets**

At December 31, 2011, prepaid and other current assets were comprised of short-term investments of \$6,516,000, other prepaid expenses of \$5,674,000, prepaid insurance expense of \$4,185,000, other current receivables of \$4,394,000 and other current assets of \$1,106,000. At December 31, 2010, prepaid and other current assets were comprised of short-term investments of \$6,450,000, other prepaid expenses of \$4,386,000, prepaid insurance expense of \$3,402,000, other current receivables of \$2,063,000, current income tax receivable of \$1,555,000 and other current assets of \$804,000.

**e. Property and Equipment, net**

Property and equipment are stated at cost. Equipment held under capital leases is stated at the present value of minimum lease payments at the inception of the related leases. Depreciation for buildings and improvements is recognized under the straight-line method over 20 to 40 years or, for leasehold improvements, over the remaining term of the lease plus renewal options for which failure to renew the lease imposes a penalty on the Company in such an amount that a renewal appears, at the inception of the lease, to be reasonably assured. The primary penalty to which the Company is subject is the economic detriment associated with existing leasehold improvements which might be impaired if a decision is made not to continue the use of the leased property. Depreciation for movable equipment and software and software development costs is recognized over useful lives of three to ten years.

**f. Goodwill**

The Company evaluates goodwill for impairment at least on an annual basis and more frequently if certain indicators are encountered. Goodwill is to be tested at the reporting unit level, defined as an operating segment or one level below an operating segment (referred to as a component), with the fair value of the reporting unit being compared to its carrying amount, including goodwill. If the fair value of a reporting unit exceeds its carrying amount, goodwill of the reporting unit is not considered to be impaired. The Company has determined that it has one operating, as well as one reportable, segment. For impairment testing purposes, the centers qualify as components of that operating segment. Because they have similar economic characteristics, the components are aggregated and deemed a single reporting unit. The Company completed its annual impairment test as of December 31, 2011, and determined that goodwill was not impaired.

**g. Intangible Assets**

Intangible assets consist primarily of deferred financing costs of the Company and certain amortizable and non-amortizable non-compete and customer agreements. Deferred financing costs and amortizable non-compete agreements and customer agreements are amortized over the term of the related debt as interest expense and the contractual term or estimated life (five to ten years) of the agreements as amortization expense, respectively.

**h. Other Long-Term Liabilities**

At December 31, 2011, other long-term liabilities are comprised of deferred rent of \$10,255,000, tax-effected unrecognized benefits of \$8,356,000 (see note 1(k)), purchase price obligation of \$5,236,000, unfavorable lease liability of \$4,084,000 and other long-term liabilities of \$200,000. At December 31, 2010, other long-term liabilities are comprised of deferred rent of \$8,555,000, tax-effected unrecognized benefits of \$8,434,000 (see note 1(k)), purchase price obligation of \$3,895,000, unfavorable lease liability of \$2,581,000, negative fair value of our interest rate swap of \$902,000 and other long-term liabilities of \$37,000.

**i. Revenue Recognition**

Center revenues consist of billing for the use of the centers' facilities (the "facility fee") directly to the patient or third-party payor and, in limited instances, billing for anesthesia services. Such revenues are recognized when the related surgical procedures are performed. Revenues exclude any amounts billed for physicians' surgical services, which are billed separately by the physicians to the patient or third-party payor.

Revenues from centers are recognized on the date of service, net of estimated contractual adjustments from third-party medical service payors including Medicare and Medicaid. During the years ended December 31, 2011, 2010 and 2009, the Company derived approximately 29%, 31% and 33%, respectively, of its revenues from government healthcare programs, primarily Medicare, and managed Medicare programs. Concentration of credit risk with respect to other payors is limited due to the large number of such payors.

**j. Operating Expenses**

Substantially all of the Company's operating expenses relate to the cost of revenues and the delivery of care at the Company's surgery centers. Such costs primarily include the surgery centers' clinical and administrative salaries and benefits, supply cost, rent and other variable expenses, such as linen cost, repair and maintenance of equipment, billing fees and bad debt expense. Bad debt expense was approximately \$18,449,000, \$16,945,000 and \$16,781,000 for the years ended December 31, 2011, 2010 and 2009, respectively.

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**Item 8. Financial Statements and Supplementary Data – (continued)****AmSurg Corp.****Notes to the Consolidated Financial Statements –(continued)****k. Income Taxes**

The Company files a consolidated federal income tax return. Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

The Company applies recognition thresholds and measurement attributes for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return as it relates to accounting for uncertainty in income taxes. In addition, it is the Company's policy to recognize interest accrued and penalties, if any, related to unrecognized benefits as income tax expense in its statement of earnings. The Company does not expect significant changes to its tax positions or liability for tax uncertainties during the next 12 months.

The Company and its subsidiaries file income tax returns in the U.S. federal jurisdiction and various state jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal or state income tax examinations for years prior to 2008.

**l. Earnings Per Share**

Basic earnings per share is computed by dividing net earnings attributable to AmSurg Corp. common shareholders by the combined weighted average number of common shares, while diluted earnings per share is computed by dividing net earnings attributable to AmSurg Corp. common shareholders by the weighted average number of such common shares and dilutive share equivalents.

**m. Share-Based Compensation**

Transactions in which the Company receives employee and non-employee services in exchange for the Company's equity instruments or liabilities that are based on the fair value of the Company's equity securities or may be settled by the issuance of these securities are accounted using a fair value method. The Company applies the Black-Scholes method of valuation in determining share-based compensation expense.

Benefits of tax deductions in excess of recognized compensation cost are reported as a financing cash flow, thus reducing the Company's net operating cash flows and increasing its financing cash flows by \$977,000, \$200,000 and \$32,000 for the years ended December 31, 2011, 2010 and 2009, respectively.

The Company examines its concentrations of holdings, its historical patterns of award exercises and forfeitures as well as forward-looking factors, in an effort to determine if there were any discernable employee populations. From this analysis, the Company has identified three employee populations, consisting of senior executives, officers and all other recipients. The expected volatility rate applied was estimated based on historical volatility. The expected term assumption applied is based on contractual terms, historical exercise and cancellation patterns and forward-looking factors where present for each population identified. The risk-free interest rate used is based on the U.S. Treasury yield curve in effect at the time of the grant. The pre-vesting forfeiture rate is based on historical rates and forward-looking factors for each population identified. The Company will adjust the estimated forfeiture rate to its actual experience. The Company intends to retain its earnings to finance growth and development of the business and does not expect to disclose or pay any cash dividends in the foreseeable future.

**n. Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The determination of contractual and bad debt allowances constitutes a significant estimate. Some of the factors considered by management in determining the amount of such allowances are the historical trends of the centers' cash collections and contractual and bad debt write-offs, accounts receivable agings, established fee schedules, contracts with payors and procedure statistics. Accordingly, net accounts receivable at December 31, 2011 and 2010 reflect allowances for contractual adjustments of \$136,265,000 and \$118,503,000, respectively, and allowance for bad debt expense of \$18,844,000 and \$13,070,000, respectively.

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**Item 8. Financial Statements and Supplementary Data – (continued)****AmSurg Corp.****Notes to the Consolidated Financial Statements –(continued)****o. Recent Accounting Pronouncements**

In June 2011, the Financial Accounting Standards Board ("FASB ") amended Accounting Standards Codification ("ASC") 220, "Presentation of Comprehensive Income." This amendment will require companies to present the components of net income and other comprehensive income either as one continuous statement or as two consecutive statements. It eliminates the option to present components of other comprehensive income as part of the statement of changes in stockholders' equity. The amended guidance, which must be applied retroactively, is effective for interim and annual periods beginning after December 15, 2011, with earlier adoption permitted. This Accounting Standards Update ("ASU") impacts presentation only and will have no effect on the Company's consolidated financial condition, results of operations or cash flows. In December 2011, the FASB issued ASU 2011-12, which is an update to the amendment issued in June. This amendment defers the specific requirements to present items that are reclassified from accumulated other comprehensive income to net income separately with their respective components of net income and other comprehensive income.

In July 2011, the FASB issued ASU 2011-07, which requires healthcare organizations that perform services for patients for which the ultimate collection of all or a portion of the amounts billed or billable cannot be determined at the time services are rendered to present all bad debt expense associated with patient service revenue as an offset to the patient service revenue line item in the statement of operations. The ASU also requires qualitative disclosures about the Company's policy for recognizing revenue and bad debt expense for patient service transactions and quantitative information about the effects of changes in the assessment of collectability of patient service revenue. This ASU is effective for fiscal years beginning after December 15, 2011. The Company has evaluated ASU 2011-07 and has determined that the requirements of this ASU are not applicable to the Company as the ultimate collection of patient service revenue is generally determinable at the time of service, and therefore, the ASU will not have an impact on the Company's consolidated financial position, results of operations or cash flows.

In September 2011, the FASB issued ASU 2011-08, which simplifies how entities test goodwill for impairment. Previous guidance required an entity to perform a two-step goodwill impairment test at least annually by comparing the fair value of a reporting unit with its carrying amount, including goodwill, and recording an impairment loss if the fair value is less than the carrying amount. This ASU allows an entity to first assess qualitative factors to determine whether the existence of events or circumstances leads to a determination that it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If an entity determines after that assessment that it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, then performing the two-step impairment test is not required. This ASU is applicable to interim and annual goodwill impairment tests performed for fiscal years beginning after December 15, 2011, and will be adopted by the Company effective January 1, 2012. The adoption of this ASU is not expected to impact the Company's consolidated financial position, results of operations or cash flows.

**p. Reclassifications**

Certain prior year amounts have been reclassified to reflect the impact of additional discontinued operations as further discussed in note 3.

**2. Acquisitions**

The Company accounts for its business combinations under the fundamental requirements of the acquisition method of accounting and under the premise that an acquirer be identified for each business combination. The acquirer is the entity that obtains control of one or more businesses in the business combination and the acquisition date is the date the acquirer achieves control. The assets acquired, liabilities assumed (including contingencies, if any) and any noncontrolling interests in the acquired business at the acquisition date are recognized at their fair values as of that date, and the direct costs incurred in connection with the business combination are recorded and expensed separately from the business combination.

As a significant part of its growth strategy, the Company primarily acquires controlling interests in centers. During 2011 and 2010, the Company, through a wholly owned subsidiary, acquired a controlling interest in 24 centers and seven centers, respectively. In addition, the Company acquired a non-controlling interest in two centers during 2011. The Company acquired its interest in nine centers in separate transactions during 2011, and acquired 17 centers, including the less than majority owned centers, from National Surgical Care, Inc. ("NSC") in one transaction on September 1, 2011. The aggregate amount paid for the acquisitions during 2011 and 2010 was approximately \$239,223,000 and \$53,690,000, respectively, and was paid in cash and funded by a combination of operating cash flow and borrowings under the Company's revolving credit agreement. In addition, the Company had purchase price payables at December 31, 2011 and 2010 of approximately \$5,236,000 and \$3,895,000, respectively, which was reflected as other long-term liabilities in the balance sheet. The purchase price of the NSC centers was \$135,000,000, plus cash for the amount of working capital as of the transaction date in excess of the targeted working capital, as defined in the purchase agreement, plus cash for NSC's interest in the acquired cash in the bank as of the transaction date. The Company withheld \$1,700,000 of the purchase price at close due to the anticipated exercise by the non-controlling partners at one of the acquired centers of their right to purchase the remaining interest upon a change of control of the center, which was exercised on November 1, 2011. The Company has agreed to pay as additional consideration an amount up to \$7,500,000 based on a multiple of the excess

earnings over the targeted earnings of the acquired centers, if any, from the period of January 1, 2012 to December 31, 2012. In addition to the \$1,700,000 of the purchase price withheld, \$3,500,000 of the purchase price was placed in an escrow fund to allow for any working capital adjustments up to \$500,000, with the remainder allocated to potential indemnity claims, if any, which must be asserted by the Company within one year of the transaction date. In conjunction with the transaction, the Company engaged a third party valuation firm to obtain assistance in establishing the fair value of certain assets and liabilities including certain tangible and intangible assets of the NSC centers and the contingent purchase price payable related to the additional

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**Item 8. Financial Statements and Supplementary Data – (continued)**

**AmSurg Corp.**

**Notes to the Consolidated Financial Statements –(continued)**

consideration. As of December 31, 2011, the Company's assessment related to the fair value of these items and correlating purchase price allocation were finalized resulting in certain adjustments to the opening balance sheet. The majority of the post acquisition adjustments are a result of the completion of the Company's fair value assessment which include the following: the recording of an additional \$4,900,000 of property and equipment, the establishment of a \$3,100,000 contingent purchase price payable in association with the potential additional consideration due to NSC and the establishment of a \$1,930,000 unfavorable lease liability.

The total fair value of an acquisition includes an amount allocated to goodwill, which results from the centers' favorable reputations in their markets, their market positions and their ability to deliver quality care with high patient satisfaction consistent with the Company's business model.

The acquisition date fair value of the total consideration transferred and acquisition date fair value of each major class of consideration for the acquisitions completed during 2011 and 2010, including post acquisition date adjustments recorded to finalize purchase price allocations, are as follows (in thousands):

	Acquired		
	NSC Centers	Individual Acquisitions	Individual Acquisitions
	2011		2010
Accounts receivable	\$ 16,032	\$ 7,837	\$ 2,471
Supplies inventory, prepaid and other current assets	5,744	1,888	1,072
Investment in unconsolidated subsidiaries	10,710	-	-
Property and equipment	18,208	8,350	4,291
Goodwill	167,865	169,777	86,852
Other intangible assets	268	1,750	-
Accounts payable	(2,612)	(2,665)	(946)
Other accrued liabilities	(5,233)	(415)	(198)
Long-term debt	(2,900)	(5,698)	(2,410)
Other long-term liabilities	(1,895)	-	-
<b>Total fair value</b>	<b>206,187</b>	<b>180,824</b>	<b>91,132</b>
Less: Fair value attributable to noncontrolling interests	70,502	72,050	33,547
<b>Acquisition date fair value of total consideration transferred</b>	<b>\$ 135,685</b>	<b>\$ 108,774</b>	<b>\$ 57,585</b>

Fair value attributable to noncontrolling interests is based on significant inputs that are not observable in the market. Key inputs used to determine the fair value include financial multiples used in the purchase of noncontrolling interests in centers. Such multiples, based on earnings, are used as a benchmark for the discount to be applied for the lack of control or marketability. The fair value of noncontrolling interests for acquisitions where the purchase price allocation is not finalized may be subject to adjustment as the Company completes its initial accounting for acquired intangible assets. During 2011 and 2010, respectively, approximately \$212,576,000 and \$55,400,000 of goodwill recorded was deductible for tax purposes. Goodwill deductible for tax purposes associated with the acquisition of NSC centers was approximately \$110,000,000 for the year ended December 31, 2011. Associated with the transactions discussed above, the Company incurred and expensed in other operating expenses approximately \$3,783,000 and \$248,000 in acquisition related costs during 2011 and 2010, respectively. The increase in transaction costs for the year ended December 31, 2011 are primarily due to the acquisition of the NSC centers.

Revenues and net earnings included in the years ended December 31, 2011 and 2010 associated with these acquisitions are as follows (in thousands):

	Acquired		
	NSC Centers	Individual Acquisitions	Individual Acquisitions
	2011		2010
Revenues	\$ 35,130	\$ 23,534	\$ 17,397
Net earnings	4,982	7,251	5,358
Less: Net earnings attributable to noncontrolling interests	3,193	4,213	2,708
<b>Net earnings attributable to AmSurg Corp. common shareholders</b>	<b>\$ 1,789</b>	<b>\$ 3,038</b>	<b>\$ 2,650</b>

**Item 8. Financial Statements and Supplementary Data -- (continued)****AmSurg Corp.****Notes to the Consolidated Financial Statements --(continued)**

The unaudited consolidated pro forma results for the years ended December 31, 2011 and 2010, assuming all 2011 and 2010 acquisitions had been consummated on January 1, 2010, are as follows (in thousands, except per share data):

	2011	2010
Revenues	\$ 902,209	\$ 932,502
Net earnings	212,612	219,435
Amounts attributable to AmSurg Corp. common shareholders:		
Net earnings from continuing operations	58,117	64,792
Net earnings	57,010	63,473
Net earnings from continuing operations per common share:		
Basic	\$ 1.91	\$ 2.14
Diluted	\$ 1.86	\$ 2.11
Net earnings:		
Basic	\$ 1.87	\$ 2.10
Diluted	\$ 1.83	\$ 2.07
Weighted average number of shares and share equivalents:		
Basic	30,452	30,255
Diluted	31,211	30,689

**3. Dispositions**

The Company initiated the dispositions of certain of its centers primarily due to management's assessment of the limited growth opportunities at these centers and as a result of certain market driven strategies. Results of operations of the centers discontinued for the years ended December 31, 2011, 2010 and 2009, are as follows (in thousands):

	2011	2010	2009
Cash proceeds from disposal	\$ 7,026	\$ 60	\$ 400
Net (loss) earnings from discontinued operations	(1,146)	988	4,754
Discontinued operations, net of income tax, attributable to AmSurg Corp.	(1,202)	(1,319)	1,407

The results of operations of discontinued centers have been classified as discontinued operations in all periods presented. Results of operations of the combined discontinued surgery centers for the years ended December 31, 2011, 2010 and 2009 are as follows (in thousands):

	2011	2010	2009
Revenues	\$ 4,019	\$ 17,268	\$ 20,136
Earnings before income taxes	484	4,646	6,836
Net earnings	397	3,720	5,456

**4. Property and Equipment**

Property and equipment at December 31, 2011 and 2010 were as follows (in thousands):

	2011	2010
Building and improvements	\$ 126,537	\$ 106,678
Movable equipment, software and software development costs	182,254	154,317
Construction in progress	4,824	8,154
	313,615	269,149
Less accumulated depreciation	(169,057)	(149,982)
Property and equipment, net	\$ 144,558	\$ 119,167

**Item 8. Financial Statements and Supplementary Data – (continued)**

**AmSurg Corp.**

**Notes to the Consolidated Financial Statements –(continued)**

The Company capitalized interest in the amount of \$85,000, \$54,000 and \$66,000 for the years ended December 31, 2011, 2010 and 2009, respectively. At December 31, 2011, the Company and its partnerships had unfunded construction and equipment purchases of approximately \$4,307,000 in order to complete construction in progress. Depreciation expense for continuing and discontinued operations for the years ended December 31, 2011, 2010 and 2009 was \$26,068,000, \$25,279,000 and \$22,784,000, respectively.

**5. Goodwill and Intangible Assets**

The changes in the carrying amount of goodwill for the years ended December 31, 2011 and 2010 are as follows (in thousands):

	<u>2011</u>	<u>2010</u>
Balance, beginning of period	\$ 894,497	\$ 813,876
Goodwill acquired, including post acquisition adjustments	344,089	86,539
Disposals	<u>(9,288)</u>	<u>(5,918)</u>
Balance, end of period	<u>\$ 1,229,298</u>	<u>\$ 894,497</u>

Amortizable intangible assets at December 31, 2011 and 2010 consisted of the following (in thousands):

	<u>2011</u>			<u>2010</u>		
	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net</u>
Deferred financing cost	\$ 6,541	\$ (1,838)	\$ 4,703	\$ 4,516	\$ (567)	\$ 3,949
Agreements, contracts and other intangible assets	<u>3,448</u>	<u>(2,026)</u>	<u>1,422</u>	<u>3,180</u>	<u>(1,818)</u>	<u>1,362</u>
Total amortizable intangible assets	<u>\$ 9,989</u>	<u>\$ (3,864)</u>	<u>\$ 6,125</u>	<u>\$ 7,696</u>	<u>\$ (2,385)</u>	<u>\$ 5,311</u>

Amortization of intangible assets for the years ended December 31, 2011, 2010 and 2009 was \$1,472,000, \$1,184,000 and \$492,000, respectively. Included in amortization expense for the year ended December 31, 2010 is \$434,000 of previously unamortized deferred financing costs expensed in conjunction with the refinancing of the revolving credit facility (see note 6). Estimated amortization of intangible assets for the five years and thereafter subsequent to December 31, 2011, with a weighted average amortization period of 5 years, is \$1,306,000, \$ 1,303,000, \$1,297,000, \$1,297,000, \$701,000 and \$221,000.

At December 31, 2011 and 2010, other non-amortizable intangible assets related to restrictive covenant arrangements were \$9,300,000 and \$6,050,000, respectively.

**6. Long-term Debt**

Long-term debt at December 31, 2011 and 2010 was comprised of the following (in thousands):

	<u>2011</u>	<u>2010</u>
Revolving credit agreement (average rate of 2.8%)	\$ 351,000	\$ 188,000
Fixed rate senior secured notes (rate of 6.04%)	75,000	75,000
Other debt at an average rate of 4.1%, due through 2019	20,052	12,933
Capitalized lease arrangements at an average rate of 5.5%, due through 2026	<u>12,711</u>	<u>13,930</u>
	458,763	289,863
Less current portion	<u>10,800</u>	<u>6,648</u>
Long-term debt	<u>\$ 447,963</u>	<u>\$ 283,215</u>

**Item 8. Financial Statements and Supplementary Data – (continued)**

**AmSurg Corp.**

**Notes to the Consolidated Financial Statements –(continued)**

Prior to the closing the NSC acquisition, the Company exercised the accordion feature on its revolving credit facility on April 7, 2011. The amended revolving credit agreement permits the Company to borrow up to \$450,000,000 to, among other things, finance its acquisition and development projects and any future stock repurchase programs at an interest rate equal to, at the Company's option, the base rate plus 0.75% to 1.75% or LIBOR plus 1.75% to 2.75%, or a combination thereof; provides for a fee of 0.20% to 0.50% of unused commitments; and contains certain covenants relating to the ratio of debt to operating performance measurements, interest coverage ratios and minimum net worth. Borrowings under the revolving credit agreement will mature in April 2016 and are secured primarily by a pledge of the stock of our wholly-owned subsidiaries and our partnership and membership interests in the limited partnerships and limited liability companies. The Company was in compliance with all covenants contained in the revolving credit agreement at December 31, 2011.

On May 28, 2010, the Company issued, pursuant to a note purchase agreement, \$75,000,000 of 6.04% senior secured notes due May 28, 2020. The senior secured notes are pari passu with the indebtedness under the Company's revolving credit facility and require payment of principal beginning in August 2013. The note purchase agreement governing the senior secured notes contains covenants similar to the covenants in the revolving credit agreement. The Company was in compliance with all covenants contained in the note purchase agreement at December 31, 2011.

Certain partnerships included in the Company's consolidated financial statements have loans with local lending institutions, included above in other debt, which are collateralized by certain assets of the centers with a book value of approximately \$76,254,000. The Company and the partners have guaranteed payment of the loans in proportion to the relative partnership interests.

Principal payments required on long-term debt in the five years and thereafter subsequent to December 31, 2011 are \$10,800,000, \$13,471,000, \$14,609,000, \$11,936,000, \$362,819,000 and \$45,128,000.

**7. Derivative Instruments**

The Company entered into an interest rate swap agreement in April 2006, the objective of which was to hedge exposure to the variability of the future expected cash flows attributable to the variable interest rate of a portion of the Company's outstanding balance under its revolving credit agreement. The interest rate swap matured in April 2011. Prior to April 2011, the interest rate swap had a notional amount of \$50,000,000. The Company paid to the counterparty a fixed rate of 5.365% of the notional amount of the interest rate swap and received a floating rate from the counterparty based on LIBOR. In the opinion of management and as permitted by Accounting Standards Codification Topic 815, *Derivatives and Hedging* ("ASC 815"), the interest rate swap (as a cash flow hedge) was a fully effective hedge. Payments or receipts of cash under the interest rate swap were shown as a part of operating cash flows, consistent with the interest expense incurred pursuant to the revolving credit agreement. An increase in the fair value of the interest rate swap, net of tax, of \$515,000, \$1,334,000 and \$1,002,000 was included in other comprehensive income in the years ended December 31, 2011, 2010 and 2009, respectively. Accumulated other comprehensive loss, net of income taxes, was \$0 and \$515,000 as of December 31, 2011 and 2010, respectively.

The fair values of derivative instruments in the consolidated balance sheets as of December 31, 2011 and 2010 were as follows (in thousands):

Asset Derivatives				Liability Derivatives			
2011		2010		2011		2010	
Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value

Derivatives designated as hedging instruments	Other assets, net	\$	-	Other assets, net	\$	-	Other long-term liabilities	\$	-	Other long-term liabilities	\$	902
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**8. Fair Value Measurements**

The fair value of a financial instrument is the amount at which the instrument could be exchanged in an orderly transaction between market participants to sell the asset or transfer the liability. The inputs used by the Company to measure fair value are classified into the following fair value hierarchy:

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Inputs other than quoted prices included in Level 1 that are observable for the asset or liability through corroboration with market data at the measurement date.

Level 3: Unobservable inputs that reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date.

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**Item 8. Financial Statements and Supplementary Data – (continued)****AmSurg Corp.****Notes to the Consolidated Financial Statements –(continued)**

The Company adopted the updated guidance of the FASB related to fair value measurements and disclosures, which requires a reporting entity to disclose separately the amounts of significant transfers in and out of Level 1 and Level 2 fair value measurements and to describe the reasons for the transfers. In addition, in the reconciliation for fair value measurements using significant unobservable inputs, or Level 3, a reporting entity should disclose separately information about purchases, sales, issuances and settlements. The updated guidance also requires that an entity should provide fair value measurement disclosures for each class of assets and liabilities and disclosures about the valuation techniques and inputs used to measure fair value for both recurring and non-recurring fair value measurements for Level 2 and Level 3 fair value measurements. The guidance was effective for the Company January 1, 2010, except for the disclosures about purchases, sales, issuances and settlements in the roll forward activity in Level 3 fair value measurements, which was effective for the Company January 1, 2011. The adoption of the updated guidance for Level 3 fair value measurements did not have an impact on the Company's consolidated results of operations or financial condition.

In determining the fair value of assets and liabilities that are measured on a recurring basis at December 31, 2011 and 2010, with the exception of the contingent purchase price payable, the Company utilized Level 2 inputs to perform such measurements methods which were commensurate with the market approach. The Company utilized Level 3 inputs, which utilizes unobservable data, to measure the fair value of the contingent purchase price payable (in thousands):

	<u>2011</u>	<u>2010</u>
<b>Assets:</b>		
Supplemental executive retirement savings plan investments - Level 2	\$ 6,516	\$ 6,450
<b>Liabilities:</b>		
Contingent purchase price payable - Level 3 (see note 2)	\$ 3,100	\$ -
Interest rate swap agreement - Level 2	-	902
Total	\$ 3,100	\$ 902

The fair value of the supplemental executive retirement savings plan investments, which are included in prepaid and other current assets, was determined using the calculated net asset values obtained from the plan administrator and observable inputs of similar public mutual fund investments. The fair value of the contingent purchase price payable was determined utilizing budgets developed by management to assess the future earnings of the NSC centers, which were based on both historical and forecasted future activity. There have been no changes to the fair value of the contingent purchase price payable since its establishment. The fair value of the interest rate swap agreement, which is included in other long-term liabilities, was determined by a valuation obtained from the financial institution that is the counterparty to the interest rate swap agreement. The valuation, which represents the amount that the Company would have paid if the agreement was terminated, considered current interest rate swap rates, the critical terms of the agreement and interest rate projections. There were no transfers to or from Levels 1 and 2 during the year ended December 31, 2011.

Cash and cash equivalents, receivables and payables are reflected in the financial statements at cost, which approximates fair value. The fair value of fixed rate long-term debt, with a carrying value of \$101,188,000, was \$105,302,000 at December 31, 2011. The fair value of variable-rate long-term debt approximates its carrying value of \$357,575,000 at December 31, 2011. The fair value of fixed rate long-term debt, with a carrying value of \$148,109,000, was \$150,935,000 at December 31, 2010. The fair value of variable-rate long-term debt approximates its carrying value of \$141,754,000 at December 31, 2010. The fair value is determined based on an estimation of discounted future cash flows of the debt at rates currently quoted or offered to the Company for similar debt instruments of comparable maturities by its lenders.

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**Item 8. Financial Statements and Supplementary Data – (continued)**

**AmSurg Corp.**

**Notes to the Consolidated Financial Statements –(continued)**

**9. Leases**

The Company has entered into various building and equipment capital and operating leases for its surgery centers in operation and under development and for office space, expiring at various dates through 2031. Future minimum lease payments, including payments during expected renewal option periods, at December 31, 2011 were as follows (in thousands):

<u>Year Ended December 31,</u>	<u>Capitalized Equipment Leases</u>	<u>Operating Leases</u>
2012	\$ 3,448	\$ 42,483
2013	1,762	41,861
2014	1,171	41,385
2015	986	40,434
2016	924	39,744
Thereafter	8,847	314,692
Total minimum rentals	17,138	\$ 520,599
Less amounts representing interest at rates ranging from 3.8% to 14.0%	4,427	
Capital lease obligations	\$ 12,711	

At December 31, 2011, buildings and equipment with a cost of approximately \$18,968,000 and accumulated depreciation of approximately \$5,583,000 were held under capital leases. The Company and the partners in the partnerships have guaranteed payment of certain of these leases. Rental expense for operating leases for the years ended December 31, 2011, 2010 and 2009 was approximately \$42,413,000, \$37,301,000 and \$35,401,000, respectively.

**10. Shareholders' Equity**

**a. Common Stock**

During the year ended December 31, 2009, the Company purchased 830,700 shares of the Company's common stock for approximately \$12,587,000, at an average price of \$15 per share, which completed a \$25,000,000 stock repurchase program authorized by the Company's Board of Directors in September 2008.

On April 22, 2009 the Company's Board of Directors approved an additional stock repurchase program for up to \$40,000,000 of the Company's shares of common stock over the following 18 months. This plan expired in October 2010 with no shares having been purchased pursuant to the plan.

On October 20, 2010, the Company's Board of Directors approved a new stock repurchase program for up to \$40,000,000 of the Company's shares of common stock over the following 18 months. During the year ended December 31, 2011, the Company purchased 344,100 shares of the Company's common stock for approximately \$8,584,000, at an average price of \$24.92 per share, in order to mitigate the dilutive effect of shares issued upon the exercise of stock options pursuant to the Company's stock incentive plans. In addition, the Company repurchased 62,700 shares of common stock for approximately \$1,423,000 to cover payroll withholding taxes in connection with the vesting of restricted stock awards in accordance with the restricted stock agreements.

**b. Shareholder Rights Plan**

In 1999, the Company's Board of Directors adopted a shareholder rights plan and declared a distribution of one stock purchase right for each outstanding share of the Company's common stock to shareholders of record on December 16, 1999 and for each share of common stock issued thereafter. The shareholder rights plan expired on December 2, 2009.



Item 8. Financial Statements and Supplementary Data -- (continued)

AmSurg Corp.

Notes to the Consolidated Financial Statements --(continued)

c. Stock Incentive Plans

In May 2006, the Company adopted the AmSurg Corp. 2006 Stock Incentive Plan. The Company also has options outstanding under the AmSurg Corp. 1997 Stock Incentive Plan, under which no additional options may be granted. Under these plans, the Company has granted restricted stock and non-qualified options to purchase shares of common stock to employees and outside directors from its authorized but unissued common stock. At December 31, 2011, 2,760,250 shares were authorized for grant under the 2006 Stock Incentive Plan and 1,296,301 shares were available for future equity grants, including 538,126 shares available for issuance as restricted stock. Restricted stock granted to outside directors in 2010 and 2011 vests over a two year period. Restricted stock granted to outside directors prior to 2010 vests one-third on the date of grant, with the remaining shares vesting over a two-year term and is restricted from trading for five years from the date of grant. Restricted stock granted to employees during 2009 and thereafter vests over four years in three equal installments beginning on the second anniversary of the date of grant. Restricted stock granted to employees prior to 2009 vests at the end of four years from the date of grant. The fair value of restricted stock is determined based on the closing bid price of the Company's common stock on the grant date.

Options are granted at market value on the date of the grant. Prior to 2007, granted options vested in four equal installments, commencing on the date of grant. Options granted in 2007 and 2008 vest at the end of four years from the grant date. No options were issued in 2011, 2010 or 2009. Outstanding options have a term of ten years from the date of grant.

Other information pertaining to share-based activity for the years ended December 31, 2011, 2010 and 2009 was as follows (in thousands):

	2011	2010	2009
Share-based compensation expense	\$ 6,178	\$ 4,869	\$ 4,068
Fair value of shares vested	7,356	1,647	5,382
Cash received from option exercises	6,872	2,583	201
Tax benefit from option exercises	977	200	34

As of December 31, 2011, the Company had total unrecognized compensation cost of approximately \$5,938,000 related to non-vested awards, which the Company expects to recognize through 2015 and over a weighted-average period of 1.1 years.

Average outstanding share-based awards to purchase approximately 922,801, 2,384,000 and 2,457,000 shares of common stock that had an exercise price in excess of the average market price of the common stock during the years ended December 31, 2011, 2010 and 2009, respectively, were not included in the calculation of diluted securities under the treasury method for purposes of determining diluted earnings per share due to their anti-dilutive impact.

A summary of the status of and changes for non-vested restricted shares for the three years ended December 31, 2011, is as follows:

	Number of Shares	Weighted Average Grant Price
Non-vested shares at January 1, 2009	327,751	\$ 23.83
Shares granted	162,507	19.34
Shares vested	(9,666)	22.55
Shares forfeited	(14,205)	23.59
Non-vested shares at December 31, 2009	466,387	\$ 22.29
Shares granted	233,460	21.83
Shares vested	(8,973)	20.45
Shares forfeited	(25,965)	22.21
Non-vested shares at December 31, 2010	664,909	\$ 22.16
Shares granted	276,869	21.78
Shares vested	(208,949)	23.11
Shares forfeited	(417)	24.75
Non-vested shares at December 31, 2011	732,412	\$ 21.91

Item 8. Financial Statements and Supplementary Data – (continued)

AmSurg Corp.

Notes to the Consolidated Financial Statements –(continued)

A summary of stock option activity for the three years ended December 31, 2011 is summarized as follows:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)
Outstanding at January 1, 2009	3,275,803	\$ 22.23	6.7
Options exercised with total intrinsic value of \$112,000	(14,699)	13.67	
Options terminated	(110,052)	23.73	
Outstanding at December 31, 2009	3,151,052	\$ 22.22	5.0
Options exercised with total intrinsic value of \$511,000	(157,750)	16.38	
Options terminated	(91,313)	23.73	
Outstanding at December 31, 2010	2,901,989	\$ 22.49	4.5
Options exercised with total intrinsic value of \$2,482,000	(374,350)	18.36	
Options terminated	(17,585)	25.42	
Outstanding at December 31, 2011 with aggregate intrinsic value of \$7,562,000	<u>2,510,054</u>	\$ 23.09	3.4
Vested or expected to vest at December 31, 2011 with total intrinsic value of \$7,562,000	<u>2,510,054</u>	\$ 23.09	3.4
Exercisable at December 31, 2011 with total intrinsic value of \$7,514,000	<u>2,319,844</u>	\$ 23.02	3.2

The aggregate intrinsic value represents the total pre-tax intrinsic value received by the option holders on the exercise date or that would have been received by the option holders had all holders of in-the-money outstanding options at December 31, 2011 exercised their options at the Company's closing stock price on December 31, 2011.

Item 8. Financial Statements and Supplementary Data – (continued)

AmSurg Corp.

Notes to the Consolidated Financial Statements –(continued)

d. Earnings per Share

The following is a reconciliation of the numerator and denominators of basic and diluted earnings per share (in thousands, except per share amounts):

	Earnings (Numerator)	Shares (Denominator)	Per Share Amount
<b>For the year ended December 31, 2011:</b>			
Net earnings from continuing operations attributable to AmSurg Corp. per common share (basic)	\$ 51,199	30,452	\$ 1.68
Effect of dilutive securities options and non-vested shares	-	759	
Net earnings from continuing operations attributable to AmSurg Corp. per common share (diluted)	<u>\$ 51,199</u>	<u>31,211</u>	\$ 1.64
Net earnings attributable to AmSurg Corp. per common share (basic)	\$ 49,997	30,452	\$ 1.64
Effect of dilutive securities options and non-vested shares	-	759	
Net earnings attributable to AmSurg Corp. per common share (diluted)	<u>\$ 49,997</u>	<u>31,211</u>	\$ 1.60
<b>For the year ended December 31, 2010:</b>			
Net earnings from continuing operations attributable to AmSurg Corp. per common share (basic)	\$ 51,144	30,255	\$ 1.69
Effect of dilutive securities options and non-vested shares	-	434	
Net earnings from continuing operations attributable to AmSurg Corp. per common share (diluted)	<u>\$ 51,144</u>	<u>30,689</u>	\$ 1.67
Net earnings attributable to AmSurg Corp. per common share (basic)	\$ 49,825	30,255	\$ 1.65
Effect of dilutive securities options and non-vested shares	-	434	
Net earnings attributable to AmSurg Corp. per common share (diluted)	<u>\$ 49,825</u>	<u>30,689</u>	\$ 1.62
<b>For the year ended December 31, 2009:</b>			
Net earnings from continuing operations attributable to AmSurg Corp. per common share (basic)	\$ 50,741	30,576	\$ 1.66
Effect of dilutive securities options and non-vested shares	-	286	
Net earnings from continuing operations attributable to AmSurg Corp. per common share (diluted)	<u>\$ 50,741</u>	<u>30,862</u>	\$ 1.64
Net earnings attributable to AmSurg Corp. per common share (basic)	\$ 52,148	30,576	\$ 1.71
Effect of dilutive securities options and non-vested shares	-	286	
Net earnings attributable to AmSurg Corp. per common share (diluted)	<u>\$ 52,148</u>	<u>30,862</u>	\$ 1.69

Item 8. Financial Statements and Supplementary Data -- (continued)

AmSurg Corp.

Notes to the Consolidated Financial Statements --(continued)

11. Income Taxes

Total income taxes expense (benefit) for the years ended December 31, 2011, 2010 and 2009 was included within the following sections of the consolidated financial statements as follows (in thousands):

	2011	2010	2009
Income from continuing operations	\$ 35,841	\$ 33,791	\$ 34,347
Discontinued operations	2,164	(593)	1,627
Shareholders' equity	(649)	(71)	(2)
Other comprehensive income	332	860	646
Total	<u>\$ 37,688</u>	<u>\$ 33,987</u>	<u>\$ 36,618</u>

Income tax expense from continuing operations for the years ended December 31, 2011, 2010 and 2009 was comprised of the following (in thousands):

	2011	2010	2009
Current:			
Federal	\$ 11,809	\$ 11,233	\$ 16,409
State	3,573	3,327	4,291
Deferred:			
Federal	17,976	16,402	11,552
State	2,483	2,829	2,095
Income tax expense	<u>\$ 35,841</u>	<u>\$ 33,791</u>	<u>\$ 34,347</u>

Income tax expense from continuing operations for the years ended December 31, 2011, 2010 and 2009 differed from the amount computed by applying the U.S. federal income tax rate of 35% to earnings before income taxes as a result of the following (in thousands):

	2011	2010	2009
Statutory federal income tax	\$ 79,486	\$ 74,655	\$ 73,830
Less federal income tax assumed directly by noncontrolling interests	(49,021)	(44,927)	(44,049)
State income taxes, net of federal income tax benefit	3,755	4,048	4,127
Increase in valuation allowances	1,563	222	327
Interest related to unrecognized tax benefits	(83)	(151)	2
Other	141	(56)	110
Income tax expense	<u>\$ 35,841</u>	<u>\$ 33,791</u>	<u>\$ 34,347</u>

The Company recognizes interest and penalties related to unrecognized tax benefits in income tax expense. Increases and (decreases) in interest obligations of \$(109,000), \$(191,000) and \$18,000 were recognized in the consolidated statement of earnings for the years ended December 31, 2011, 2010 and 2009, respectively, resulting in a total recognition of interest obligations of approximately \$1,264,000 and \$1,373,000 in the consolidated balance sheet at December 31, 2011 and 2010, respectively. No amounts for penalties have been recorded.

The Company primarily has unrecognized tax benefits that represent an amortization deduction which is temporary in nature. A reconciliation of the beginning and ending amount of the liability associated with unrecognized tax benefits for the years ended December 31, 2011, 2010 and 2009 is as follows (in thousands):

	2011	2010	2009
Balance at beginning of year	\$ 7,144	\$ 6,766	\$ 6,190
Additions for tax positions of current year	342	378	576
Decreases for tax positions taken during a prior period	(190)	-	-
Lapse of statute of limitations	(44)	-	-
Balance at end of year	<u>\$ 7,252</u>	<u>\$ 7,144</u>	<u>\$ 6,766</u>

Item 8. Financial Statements and Supplementary Data – (continued)

AmSurg Corp.

Notes to the Consolidated Financial Statements –(continued)

The Company believes that it is reasonably possible that the total amount of unrecognized tax benefits will increase \$78,000 within the next 12 months due to continued amortization deductions. The total amount of unrecognized tax benefits that would affect our effective tax rate if recognized is approximately \$150,000.

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities at December 31, 2011 and 2010 were as follows (in thousands):

	<u>2011</u>	<u>2010</u>
<b>Deferred tax assets:</b>		
Allowance for uncollectible accounts	\$ 841	\$ 1,315
Accrued assets and other	3,562	1,800
Valuation allowances	<u>(1,491)</u>	<u>(925)</u>
Total current deferred tax assets	2,912	2,190
Share-based compensation	9,138	8,945
Interest on unrecognized tax benefits	456	533
Accrued liabilities and other	2,951	2,242
Operating and capital loss carryforwards	7,624	4,155
Valuation allowances	<u>(6,133)</u>	<u>(4,045)</u>
Total non-current deferred tax assets	<u>14,036</u>	<u>11,830</u>
Total deferred tax assets	16,948	14,020
<b>Deferred tax liabilities:</b>		
Prepaid expenses	783	681
Property and equipment, principally due to differences in depreciation	4,143	2,255
Goodwill, principally due to differences in amortization	<u>124,060</u>	<u>99,664</u>
Total deferred tax liabilities	<u>128,986</u>	<u>102,600</u>
Net deferred tax liabilities	<u>\$ 112,038</u>	<u>\$ 88,580</u>

The net deferred tax liabilities at December 31, 2011 and 2010 were recorded as follows (in thousands):

	<u>2011</u>	<u>2010</u>
Current deferred income tax assets	\$ 2,129	\$ 1,509
Non-current deferred income tax liabilities	<u>114,167</u>	<u>90,089</u>
Net deferred tax liabilities	<u>\$ 112,038</u>	<u>\$ 88,580</u>

The Company has provided valuation allowances on its gross deferred tax assets to the extent that management does not believe that it is more likely than not that such asset will be realized. Capital loss carryforwards will begin to expire in 2013, and state net operating losses will begin to expire in 2015.

**12. Related Party Transactions**

Certain surgery centers lease space from entities affiliated with their physician partners at negotiated rates that management believes were equal to fair market value at the inception of the leases based on relevant market data. Certain surgery centers reimburse their physician partners for salaries and benefits and billing fees related to time spent by employees of their practices on activities of the centers at current market rates. In addition, certain centers compensate at market rates their physician partners for physician advisory services provided to the surgery centers, including medical director and performance improvement services.

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**Item 8. Financial Statements and Supplementary Data – (continued)****AmSurg Corp.****Notes to the Consolidated Financial Statements –(continued)**

Related party payments for the years ended December 31, 2011, 2010 and 2009 were as follows (in thousands):

	2011	2010	2009
Operating leases	\$ 29,137	\$ 26,373	\$ 18,176
Salaries and benefits	64,830	61,524	60,298
Billing fees	11,240	11,387	9,589
Medical advisory services	2,575	2,245	1,989

The Company also reimburses their physician partners for operating expenses paid by the physician partners to third party providers on the behalf of the surgery center. For the years ended December 31, 2011, 2010 and 2009, reimbursed expenses were approximately 5% of other operating expenses as reported in the accompanying consolidated statement of earnings. The Company believes that the foregoing transactions are in its best interests.

It is the Company's policy that all transactions by the Company with officers, directors, five percent shareholders and their affiliates be entered into only if such transactions are on terms no less favorable to the Company than could be obtained from unaffiliated third parties, are reasonably expected to benefit the Company and are approved by the Nominating and Corporate Governance Committee of the Company's Board of Directors.

**13. Employee Benefit Programs**

As of January 1, 1999, the Company adopted the AmSurg 401(k) Plan and Trust. This plan is a defined contribution plan covering substantially all employees of the Company and provides for voluntary contributions by these employees, subject to certain limits. Company contributions are based on specified percentages of employee compensation. The Company funds contributions as accrued. The Company's contributions for the years ended December 31, 2011, 2010 and 2009 were approximately \$594,000, \$561,000 and \$525,000, respectively, and vest immediately or incrementally over five years, depending on the tenures of the respective employees for which the contributions were made.

As of January 1, 2000, the Company adopted the Supplemental Executive Retirement Savings Plan. This plan is a defined contribution plan covering all officers of the Company and provides for voluntary contributions of up to 50% of employee annual compensation. Company contributions are at the discretion of the Compensation Committee of the Board of Directors and vest incrementally over five years. The employee and employer contributions are placed in a Rabbi Trust and recorded in the accompanying consolidated balance sheets in prepaid and other current assets. Employer contributions to this plan for the years ended December 31, 2011, 2010 and 2009 were approximately \$915,000, \$234,000 and \$1,170,000, respectively. On December 30, 2011, this plan was amended to allow non-employee directors to voluntarily contribute up to 100% of annual director cash compensation to the plan.

**14. Commitments and Contingencies**

The Company and its partnerships are insured with respect to medical malpractice risk on a claims-made basis. The Company also maintains insurance for general liability, director and officer liability and property. Certain policies are subject to deductibles. In addition to the insurance coverage provided, the Company indemnifies its officers and directors for actions taken on behalf of the Company and its partnerships. Management is not aware of any claims against it or its partnerships which would have a material financial impact on the Company.

Certain of the Company's wholly owned subsidiaries, as general partners in the limited partnerships, are responsible for all debts incurred but unpaid by the limited partnership. As manager of the operations of the limited partnerships, the Company has the ability to limit potential liabilities by curtailing operations or taking other operating actions.

In the event of a change in current law that would prohibit the physicians' current form of ownership in the partnerships, the Company would be obligated to purchase the physicians' interests in substantially all of the Company's partnerships. The purchase price to be paid in such event would be determined by a predefined formula, as specified in the partnership agreements. The Company believes the likelihood of a change in current law, which would trigger such purchases, was remote as of December 31, 2011.

On September 1, 2011, the Company acquired interests in 17 centers from NSC and agreed to pay as additional consideration an amount up to \$7,500,000 based on a multiple of the excess earnings over the targeted earnings of the acquired centers (as defined), if any, from the period of January 1, 2012 to December 31, 2012. The Company has recorded \$3,100,000 in other long term liabilities in the accompanying consolidated balance sheet which represents the fair value of such liability at December 31, 2011. Settlement of such contingency is expected to occur during the first quarter of 2013.

On November 14, 2011, the Company entered into an agreement to purchase a controlling interest in a center for approximately \$4,700,000. The consummation of the acquisition is contingent upon the satisfaction of closing conditions customary for this type of transaction. The Company expects to close this transaction in the first quarter of 2012 and will fund the acquisition through a combination of operating cash flow and borrowings under its revolving credit facility.

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**Item 8. Financial Statements and Supplementary Data – (continued)****AmSurg Corp.****Notes to the Consolidated Financial Statements –(continued)****15. Supplemental Cash Flow Information**

Supplemental cash flow information for the years ended December 31 2011, 2010 and 2009 is as follows (in thousands):

	<u>2011</u>	<u>2010</u>	<u>2009</u>
<b>Cash paid during the period for:</b>			
Interest	\$ 13,815	\$ 12,219	\$ 7,854
Income taxes, net of refunds	10,232	16,776	19,336
<b>Non-cash investing and financing activities:</b>			
<b>Increase (decrease) in accounts payable associated with acquisition of</b>			
property and equipment	659	164	(1,892)
Capital lease obligations	466	4,057	8,222
Restricted stock vested	4,476	48	90
<b>Effect of acquisitions and related transactions:</b>			
Assets acquired, net of cash and adjustments	408,429	94,686	170,783
Liabilities assumed and noncontrolling interests	(163,970)	(37,101)	(74,957)
Notes payable and other obligations	(5,236)	(3,895)	-
Payment for interests in surgery centers and related transactions	<u>\$ 239,223</u>	<u>\$ 53,690</u>	<u>\$ 95,826</u>

**16. Subsequent Events**

The Company assessed events occurring subsequent to December 31, 2011 for potential recognition and disclosure in the consolidated financial statements. In February 2012, the Company, through a wholly owned subsidiary, acquired a majority interest in a surgery center for approximately \$3,200,000. Upon acquisition, the operations of the acquired center were merged into an existing center. Other than as previously described, no events have occurred that would require adjustment to or disclosure in the consolidated financial statements.

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Item 8. Financial Statements and Supplementary Data – (continued)

AmSurg Corp.

Notes to the Consolidated Financial Statements –(continued)

Quarterly Statement of Earnings Data (Unaudited)

The following table presents certain quarterly statement of earnings data for the years ended December 31, 2011 and 2010. The quarterly statement of earnings data set forth below was derived from our unaudited financial statements and includes all adjustments, consisting of normal recurring adjustments, which we consider necessary for a fair presentation thereof. Results of operations for any particular quarter are not necessarily indicative of results of operations for a full year or predictive of future periods.

	2011				2010			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
	(In thousands, except per share data)							
Revenues	\$178,870	\$188,730	\$195,934	\$223,336	\$168,027	\$175,698	\$176,343	\$183,371
Earnings from continuing operations								
before income taxes	52,589	56,527	56,281	61,704	50,934	54,604	51,905	55,856
Net earnings from continuing operations	44,275	47,578	47,795	51,612	42,501	45,516	44,261	47,230
Net earnings (loss) from discontinued operations	353	(1,201)	(178)	(120)	1,011	1,112	874	(2,009)
Net earnings	44,628	46,377	47,617	51,492	43,512	46,628	45,135	45,221
Net earnings (loss) attributable to AmSurg Corp. common shareholders:								
Continuing	11,675	12,758	13,069	13,697	12,401	12,716	12,844	13,183
Discontinued	18	(1,128)	57	(149)	296	426	274	(2,315)
Net earnings	\$ 11,693	\$ 11,630	\$ 13,126	\$ 13,548	\$ 12,697	\$ 13,142	\$ 13,118	\$ 10,868
Diluted net earnings from continuing operations per common share	\$ 0.37	\$ 0.41	\$ 0.42	\$ 0.44	\$ 0.40	\$ 0.42	\$ 0.42	\$ 0.43
Diluted net earnings per common share	\$ 0.38	\$ 0.37	\$ 0.42	\$ 0.43	\$ 0.41	\$ 0.43	\$ 0.43	\$ 0.35



Attachment J

**Diagnostic Endoscopy's Financial Hardship Agreement**

*Diagnostic Endoscopy, LLC*

778 Long Ridge Road  
Stamford, Ct. 06902

Tel # 203-322-2400  
Fax # 203-329-8855

**Financial Hardship Agreement**

By virtue of my signature set forth below, I hereby request that the institutional provider reduce their usual and customary charges in order to allow me to receive care required by my current health condition.

I represent and warrant that my financial status is such that I would be unable to receive diagnostic and treatments services if usual and customary charges were applied to the services required by my condition.

I recognize and acknowledge that this Agreement to reduce customary charges is undertaken for my benefit, that this is dependent on my financial status as of the date of this Agreement, that it will result in a fee arrangement distinct from the one usually in place for the services rendered and that the arrangement represents a confidential agreement entered into by the parties for the sole and exclusive benefit.

In light of the foregoing, I hereby agree to the following:

1. I will not seek reimbursement for the services rendered to me under this arrangement from any insurance company, welfare program, or government entitlement program (Medicare or Medicaid).
2. If any third party payor responsible for all or part of the payment due as a result of services rendered under this Agreement contacts me, I will notify such payoff of this arrangement and the reduced fees achieved as a result of the Agreement.
3. If the financial circumstances which cause me to qualify for financial hardship under this Agreement change, I will immediately notify my doctor and institutional provider in order to allow them to determine whether my financial status will then allow me to pay usual and customary charges for the services which I receive from that date forward.

Patient Name: \_\_\_\_\_

Patient Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_



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

July 26, 2012

VIA FAX ONLY

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

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

RE: Certificate of Need Application; Docket Number: 12-31772-CON  
Diagnostic Endoscopy Center, LLC and AmSurg Corp. d/b/a AmSurg Holdings, Inc.  
Proposal to Change Ownership of Diagnostic Endoscopy Center, LLC

Dear Dr. Waldstreicher and Mr. McCullough:

On June 26, 2012, the Office of Health Care Access ("OHCA") received your initial Certificate of Need ("CON") application filing on behalf of Diagnostic Endoscopy Center, LLC ("Center") and AmSurg Corp. d/b/a AmSurg Holdings, Inc. ("AmSurg") (Center and AmSurg are herein collectively referred to as "Applicants"), proposing to change ownership of the Center by way of AmSurg acquiring a 62% ownership interest in the Center for \$12,583,950.

OHCA has reviewed the CON application and requests the following additional information pursuant to General Statutes §19a-639a(c):

1. On page 9 of CON application, the Applicants discuss the reason AmSurg was chosen and the benefits of choosing AmSurg as a partner. Please provide specific examples of the benefits that AmSurg has demonstrated in its other similar acquisitions/partnerships, specifically the two Connecticut facilities in which it currently holds ownership interests (see page 11).
2. On page 9 of the CON application, the Applicants indicate that this proposal will produce immediate operating cost reductions. Please reconcile that statement with the projections presented in the Financial Attachment I on page 68. Be sure to explain and provide assumptions for each of the cost savings listed in Financial Attachment I.

3. Page 15 of the CON application states that the Center will benefit from AmSurg's contracting expertise in the areas of payers, purchasing and leasing. However, on page 18, the Applicants state that there will be no change to the existing contracts. Please explain and reconcile the two statements.
4. Additionally, please explain why there appears to be an increase over the three projected years in Medicare population for the Center and how it relates to the contracts with the current and any new payers (pages 16&17).
5. On page 13, the Applicants state that last year the Center performed 9,800 procedures. Additionally, on page 30, the Applicants state that they expect the utilization to grow by 3% based on the Center's historical utilization. Please provide the Center's last three (3) years of annual procedures, the current year-to-date and three years projected procedures. Please make sure they are reconciled with the projections in Financial Attachment I (page 68).
6. On page 17 of the CON application, the Applicants refer to an additional "physician utilizer." Please explain what the Applicant means by additional "physician utilizer". Would that involve an additional change in owner membership of the Center?
7. Regarding the Financial Attachment I, on page 68, provide a crosswalk to the projected cost savings and to the projected growth in revenues, as projected on page 17. Additionally, please re-submit Financial Attachment I with the headings labeled clearly for the appropriate fiscal years and categories (with, without and incremental to the proposal).
8. Please provide OHCA with a draft copy of the Asset Purchase Agreement between the Applicants.
9. Please provide OHCA with a copy of the Operating Agreement referred to on page 14.
10. Please address the following regarding AmSurg:
  - a. Has AmSurg, or any of its affiliated entities, been the subject of legal action pertaining to the operation of its facilities? If so, please provide the case caption, docket number and location of each case.
  - b. Does AmSurg have any pending or concluded disciplinary action against them or any of their affiliated facilities? If so, please provide details.

In responding to the questions contained in this letter, please repeat each question before providing your response. **Paginate and date** your response (e.g., each page in its entirety). Information filed after the initial CON application submission (e.g. completeness response letter, prefile testimony, late file submissions and the like) must be numbered sequentially from the Applicants' document preceding it. Please reference "Docket Number: 12-31772-CON." Submit one (1) original and five (5) hard copies of your response. In addition, please submit a scanned copy of your response including all attachments on CD in an Adobe format (.pdf) and in an MS Word format.

If you have any questions concerning this letter, please feel free to contact me at (860) 418-7012.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Lazarus", with a long horizontal flourish extending to the right.

Steven W. Lazarus  
Associate Health Care Analyst

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\*\*\* TX REPORT \*\*\*  
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STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
OFFICE OF HEALTH CARE ACCESS

FAX SHEET

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FAX: (203) 777-5806  
AGENCY: \_\_\_\_\_  
FROM: Steven Laravus  
DATE: 7/24/12 TIME: 1:50 pm  
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STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
OFFICE OF HEALTH CARE ACCESS

Date corrected  
on this  
2nd letter  
(52)

FAX SHEET

TO: Michele Volpe  
FAX: (203) 777-5806  
AGENCY: \_\_\_\_\_  
FROM: Steven Laravus  
DATE: 7/26/12 TIME: 1:50 pm  
NUMBER OF PAGES: 4  
(including transmittal sheet)

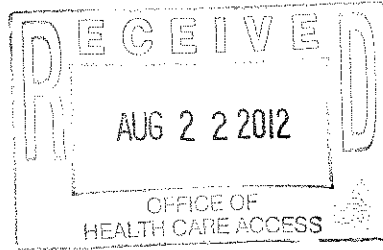
Comments: Completion letter for  
Doc: 12-31772 Enclosed.

**BERSHTEIN, VOLPE & McKEON P.C.**  
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Michele M. Volpe  
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August 21, 2012

Steven W. Lazarus  
Associate Health Care Analyst  
State of Connecticut  
Office of Health Care Access  
410 Capitol Avenue, MS#13HCA  
P.O. Box 340308  
Hartford, Connecticut 06134-0308



Re: Certificate of Need Application; Docket Number: 12-31772-CON  
Diagnostic Endoscopy, LLC and AmSurg Corp. d/b/a AmSurg Holdings, Inc.  
Proposal to Change Ownership of Diagnostic Endoscopy, LLC

Dear Mr. Lazarus:

1. On page 9 of the CON application, the Applicants discuss the reason AmSurg was chosen and the benefits of choosing AmSurg as a partner. Please provide specific examples of the benefits that AmSurg has demonstrated in its other similar acquisitions/partnerships, specifically the two Connecticut facilities in which it currently holds ownership interests (see page 11).

**Each surgery center is unique, and the benefits of partnering with AmSurg varies on a center-by-center basis. As part of its post-transaction integration planning, AmSurg conducts an assessment of each surgery center to determine areas in which AmSurg can improve the operations of the surgery center. As a leading operator of ambulatory surgical facilities throughout the United States, AmSurg has management, operational and clinical expertise and programs in the areas of clinical services, quality improvement, patient safety, continuing education, regulatory compliance, risk management and emergency preparedness that facilities managed by physicians or smaller management companies (such as the current manager of Diagnostic Endoscopy) cannot feasibly replicate.**

**For example, AmSurg provides programs and resources to each of its approximately 225 affiliated surgery centers relating to:**

- **Quality improvement and collection and analysis of quality data;**
- **Benchmarking analysis comparing the center's quality outcomes to industry standards;**
- **Up to date policy and procedure manuals that meet regulatory and accreditation requirements;**
- **Clinical experts who conduct periodic center assessments and provide hands-on support for quality and risk management initiatives;**
- **Specialty specific quality initiatives, including programs regarding infection control, patient safety and quality improvement;**
- **Clinical, regulatory and accreditation educational programs;**

**As a result of these programs, AmSurg's affiliated surgery centers exceed industry benchmarks with respect to quality, patient safety and patient satisfaction.**

**AmSurg also has significant resources in the areas of materials management, information systems, managed care contracting, planning and development, and expense management. For example, in September 2011, AmSurg acquired an ownership interest in Wilton Surgery Center from the then current manager of the facility. Following the acquisition of its ownership interest in the Wilton center, AmSurg implemented its materials management policies and has achieved a 4.4% reduction in supply cost for the surgery center. Similarly, in November 2011, AmSurg acquired an ownership interest in a surgery center located in Massachusetts. Following the acquisition of its interest in that surgery center, AmSurg has achieved a greater than 20% reduction in supply cost for that center.**

2. On page 9 of the CON application, the Applicants indicate that this proposal will produce immediate operating cost reductions. Please reconcile that statement with the projections presented in the Financial Attachment I on page 68. Be sure to explain and provide assumptions for each of the cost savings listed in Financial Attachment I.

**As indicated below in the crosswalk (Attachment K), operating cost reductions include savings in the Operating Expenses categories of Professional/Contracted Services (estimated at 10%), Supplies and Drugs (estimated at 20%) and Other Operating Expenses (e.g. marketing, liability insurance and legal fees) (estimated at 15%). Such savings are based on AmSurg's proven ability to reduce operating costs. The following transitions will achieve costs savings: national contracting for supplies and drugs, in house legal and accounting services, favorable medical waste and linen/laundry contracting, operating efficiencies in IT and software technology, national contracting for insurance coverage and favorable office supplies contracting and efficiencies. As indicated above in the response to Question 1, AmSurg has achieved regional supply cost savings in local affiliated centers.**



3. Page 15 of the CON application states that the Center will benefit from AmSurg's contracting expertise in the areas of payers, purchasing and leasing.<sup>1</sup> However, on page 18, the Applicants state that there will be no change to the existing contracts. Please explain and reconcile the two statements.

**To reconcile the two statements, we highlight that the reference to "no changes to existing contracts" is directly responding to Question 5.d. in the original CON application which queries whether there would be any changes to the existing reimbursement contracts as a result of the proposal. As a result of the proposal, there will be no immediate changes to existing payer contracts. However, it is likely that some changes will occur in the future based on AmSurg taking over contracting for Diagnostic Endoscopy.**

4. Additionally, please explain why there appears to be an increase over the three projected years in Medicare population for the Center and how it relates to the contracts with the current and any new payers (pages 16 & 17).

**As indicated in response 4.b. in the original CON application, the 1% annual increase in Medicare patient population is based on Diagnostic Endoscopy's actual experiences and the projected increase in the aging population.**

5. On page 13, the Applicants state that last year the Center performed 9,800 procedures. Additionally, on page 30, the Applicants state that they expect the utilization to grow by 3% based on the Center's historical utilization.<sup>2</sup> Please provide the Center's last three (3) years of annual procedures, the current year-to-date and three years projected procedures. Please make sure they are reconciled with the projections in Financial Attachment I (page 68).

**The last three years of annual procedures, the year-to-date procedures and the three year projections.**

<u>Year</u>	<u>Number of Procedures</u>	<u>Growth from Previous Year</u>
<b>2008</b>	<b>4,552</b>	-
<b>2009</b>	<b>8,469</b>	<b>86% *</b>
<b>2010</b>	<b>8,840</b>	<b>4%</b>
<b>2011</b>	<b>9,800</b>	<b>11% **</b>
<b>2012 year to date</b>	<b>4,846</b>	-
<b>Projected 2012</b>	<b>10,290</b>	<b>5% ***</b>
<b>Projected 2013</b>	<b>10,599</b>	<b>3% ****</b>
<b>Projected 2014</b>	<b>10,917</b>	<b>3% ****</b>
<b>Projected 2015</b>	<b>11,244</b>	<b>3% ****</b>

**\*Growth from 2008 to 2009 was related to additional physician owners joining in September 2008.**

<sup>1</sup> Page 15 of the CON application appears to be an incorrect cross reference. Page 15 does not reference "AmSurg's contracting expertise in the areas of payers, purchasing and leasing." It appears the appropriate reference should be page 10.

<sup>2</sup> Page 30 of the CON application appears to be an incorrect cross reference. Page 30 references the Letter of Intent. It appears the appropriate reference should be page 17.

**\*\*Growth in 2011 was related to an additional non-owner physician utilizer.**

**\*\*\* Projected growth in 2012 is a combination of organic growth and the addition of the non-owner physician utilizer in 2011.**

**\*\*\*\* Projected growth in 2013-2015 is based solely on organic growth.**

**Organic growth is a reflection of (1) younger physicians achieving better throughput by increasing efficiency and utilization; (2) growing patient bases for new physicians; and (3) implementation of AmSurg's scheduling systems and patient load methodologies.**

6. On page 17 of the CON application, the Applicants refer to an additional "physician utilizer". Please explain what the Applicant means by additional "physician utilizer". Would that involve an additional change in owner membership of the Center?

**"Additional physician utilizer" refers to the addition of a physician using the center to perform gastroenterology and colonoscopy procedures. When a new physician joins the group, they may do new cases at the Center. The additional physician utilizer is not an owner. Accordingly, there was no change in ownership.**

7. Regarding the Financial Attachment I, on page 68, provide a crosswalk to the projected cost savings and to the projected growth in revenues, as projected on page 17. Additionally, please re-submit Financial Attachment I with the headings labeled clearly for the appropriate fiscal years and categories (with, without and incremental to the proposal).

**Please see Attachment K for the crosswalk. Please see Attachment L for the resubmitted Financial Statement I with the headings labeled clearly for the appropriate fiscal year and categories. Please note the resubmitted Financial Statement I includes two minor revisions. First, additional operating costs in the rental operating expense category are included due to a formulaic error in which the expense did not carry over into years 2012-2015 in the original CON application. Second, a change was made in operating expenses due to reclassification of operating expenses. Specifically, expenses in the Professional/Contracted Services category were revised to reflect reclassification and were integrated into the Other Operating Expenses category. Total Operating Expenses remained the same.**

8. Please provide OHCA with a draft copy of the Asset Purchase Agreement between the Applicants.

**Please see Attachment M for a draft copy of the Asset Purchase Agreement. Please note this Agreement is still in draft form.**

9. Please provide OHCA with a copy of the Operating Agreement referred to on page 14.

**Please see Attachment N for a copy of the Operating Agreement. Please note this Agreement is still in draft form.**

10. Please address the following regarding AmSurg:

a. Has AmSurg, or any of its affiliated entities, been the subject of legal action pertaining to the operation of its facilities? If so, please provide the case caption, docket number and location of each case.

**AmSurg and its affiliates own and operate approximately 225 surgical centers located in 35 states and the District of Columbia, and physicians perform over 1.4 million procedures annually at AmSurg's affiliated surgical facilities. AmSurg and its affiliated surgical centers are involved from time to time in routine legal matters and other claims incidental to the operation of their businesses, including claims relating to contractual relationships, employment related claims and medical malpractice claims. Neither AmSurg nor any of its affiliated surgical centers have been sanctioned or subject to disciplinary action by a governmental authority. AmSurg is not aware of any pending or threatened legal proceedings relating to its two affiliated surgical centers located in the State of Connecticut.**

b. Does AmSurg have any pending or concluded disciplinary action against them or any of their affiliated facilities? If so, please provide details.

**AmSurg has not received notice from any governmental or regulatory authority of any pending or concluded disciplinary action against them or any of their affiliated surgical facilities.**

**Attachment K**

**Crosswalk**

Projections Assumptions Crosswalk for Financial Statement & Page 17 of the CON Application

	FY 2012 Projected W/out CON as % increase/(decrease) over FY 2011 Actual	FY 2013 Projected W/out CON as % increase/(decrease) over FY 2012 Projected W/out CON	FY 2014 Projected W/out CON as % increase/(decrease) over FY 2013 Projected W/out CON	FY 2015 Projected W/out CON as % increase/(decrease) over FY 2014 Projected W/out CON
<b>Revenues</b>				
Non-Government	5%	3%	3%	3%
Medicare	5%	3%	3%	3%
Medicaid and Other Medical Assistance	5%	3%	3%	3%
Other Government	5%	3%	3%	3%
Total Net Patient Patient Revenue	5%	3%	3%	3%
Other Operating Revenue	0%	0%	0%	0%
Revenue from Operations	5%	3%	3%	3%
<b>Cost Savings</b>				
Professional / Contracted Services	0%	-10%	-10%	-10%
Supplies and Drugs	0%	-20%	-20%	-20%
Other Operating Expense	0%	-15%	-15%	-15%

**Attachment L**

**Revised Financial Statement I**

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1																			
2																			
3	<b>13. B.1.</b>																		
4																			
5																			
6																			
7	<b>Total Facility:</b>																		
8																			
9	<b>Description</b>																		
10																			
11	<b>NET PATIENT REVENUE</b>																		
12	Non-Government																		
13	Medicare																		
14	Medicaid and Other Medical Aestis																		
15	Other Government																		
16	Total Net Patient Revenue																		
17																			
18	Other Operating Revenue																		
19	Revenue from Operations																		
20																			
21	<b>OPERATING EXPENSES</b>																		
22	Salaries and Fringe Benefits																		
23	Professional / Contracted Services																		
24	Supplies and Drugs																		
25	Bad Debts																		
26	Other Operating Expense																		
27	Subtotal																		
28	Depreciation/Amortization																		
29	Interest Expense																		
30	Lease Expense																		
31	Total Operating Expenses																		
32																			
33	Income (Loss) from Operations																		
34																			
35	Non-Operating Income																		
36	Income before provision for income																		
37																			
38	Provision for income taxes																		
39	Net Income																		
40																			
41	Retained earnings, beginning of year																		
42	Retained earnings, end of year																		
43																			
44	FTEs																		
45	Procedures																		
46																			
47	*Volume Statistics:																		
48																			

Provide projected Inpatient and/or outpatient statistics for any new services and provide actual and projected Inpatient and/or outpatient statistics for any existing services which will change due to the proposal.

**Attachment M**

**Copy of the Draft Asset Purchase Agreement**



## Membership Interest Purchase Agreement

This Membership Interest Purchase Agreement (the "Agreement"), dated as of \_\_\_\_\_, 2012 (the "Effective Date"), is by and among AmSurg Holdings, Inc., a Tennessee corporation ("AmSurg"), and the members (individually "Owner" and collectively "Owners") of Diagnostic Endoscopy, LLC, a Connecticut limited liability company ("DEC"), who are identified on the signature pages attached hereto.

**WHEREAS**, DEC owns and operates an ambulatory surgery center located in Stamford, Connecticut (the "Center");

**WHEREAS**, each Owner currently owns the membership interests in DEC set forth on Exhibit A, representing a total of 100% of the membership interests of DEC;

**WHEREAS**, prior to the Closing (as defined herein), the Owners shall effect a merger of DEC with and into Diagnostic Endoscopy, LLC, a Tennessee limited liability company (the "LLC"), in connection with which the LLC shall be the surviving entity, with the tax identification number and clinic licensure of DEC, and shall be owned by the Owners with the respective relative ownership interests identified on Exhibit A (the "Merger"); and

**WHEREAS**, promptly following the consummation of the Merger, AmSurg desires to purchase from the Owners, and the Owners desire to sell to AmSurg, upon and subject to the terms and conditions contained in this Agreement, the membership interests in the LLC so designated on Exhibit B (the "Purchased Interests"), resulting in AmSurg owning a 62% membership interest in the LLC, and the Owners owning a collective 38% membership interest in the LLC.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, warranties and covenants of the parties hereinafter set forth, the parties agree as follows:

### 1. PURCHASE AND SALE OF MEMBERSHIP INTEREST

**1.1 Purchase and Sale of Membership Interest by AmSurg.** Subject to the terms and conditions of this Agreement, at the Closing (as defined in Section 3.1), the Owners shall sell, transfer, convey, assign and deliver to AmSurg, and AmSurg shall purchase, acquire and accept from the Owners, the Purchased Interests in the respective percentages (from the respective Owners) indicated on Exhibit B. The Purchased Interests shall be transferred to AmSurg free and clear of any and all mortgages, pledges, liens, security interests, charges, claims, encumbrances and rights of third parties whatsoever ("Encumbrances").

**1.2 Liabilities of DEC.** The Owners will ensure that sufficient cash remains in the Center's operating accounts on the Closing Date to pay: (i) the full amount of all outstanding, unpaid checks of the LLC as of the Effective Time (as defined in Section 3.1) (the "Outstanding Checks"); (ii) amounts due to vendors that bill the LLC less often than quarterly and relate to periods prior to the Effective Time, including tax, pension and bonus payments (the "Vendor Payments"); (iii) accrued payroll amounts due to the personnel working at the Center and relating to periods prior to and through the Effective Time, including tax, pension and bonus

payments (the "Accrued Liabilities"), and (iv) the accounts payable of DEC as of the Effective Time (the "A/P") with a due date prior to the Closing Date or, in the absence of a definitive due date, with an invoice date greater than or equal to 31 days prior to the Effective Time. In the absence of a definitive invoice date for any of the A/P, the common carrier's bill of lading or the date of completion of services will substitute as the invoice date. The Outstanding Checks, Vendor Payments, Accrued Liabilities and A/P, as if the Effective Time occurred on the date of this Agreement, are each set forth on Schedule 1.2 attached hereto. Schedule 1.2 shall be updated as of the Effective Time and mutually agreed to by the parties prior to Closing. Any cash in excess of the amount required to be retained by the Center pursuant to this Section 1.2 shall be distributed to the Owners.

## 2. PURCHASE PRICE

**2.1 Purchase Price.** The aggregate cash purchase price for the Purchased Interests shall be \$12,583,950 (the "Purchase Price"), subject to reduction as set forth in Section 2.2 below. The Purchase Price shall be payable at Closing by wire transfer of immediately available funds to the accounts designated in writing by the Owners prior to the Closing Date. The Purchase Price shall be adjusted in accordance with Section 2.2. The Purchase Price shall be allocated among the Owners in the respective percentage amounts set forth on Exhibit B.

**2.2 Use of Proceeds; Repayment of Indebtedness.** Schedule 2.2 sets forth a complete listing of outstanding principal obligations of DEC for borrowed money and capitalized leases as of the Effective Date of this Agreement. Prior to Closing, none of DEC or the LLC shall incur any additional indebtedness for borrowed money or capitalized leases (the "Indebtedness") without the prior written consent of AmSurg, in which event Schedule 2.2 shall be updated accordingly. The Purchase Price shall be decreased by an amount equal to sixty-two percent (62%) multiplied by the aggregate principal amount of outstanding Indebtedness of DEC as of the Effective Time.

## 3. CLOSING

**3.1 Closing.** The closing ("Closing") of the sale and purchase of the Purchased Interests shall take place at the offices of Bass, Berry & Sims PLC, within five (5) business days following the satisfaction or waiver of all conditions to the parties' obligations to proceed with the Closing, including approval by the Connecticut Department of Public Health ("DPH") of a certificate of need ("CON") for the change of ownership of the Center from DEC to the LLC, as owned 62% by AmSurg (the "Closing Date"). The Closing shall be effective as of 12:01 a.m., Eastern Time, on the Closing Date (the "Effective Time").

**3.2 Obligations of the Parties Prior to Closing.** Prior to the Closing Date:

(a) The Owners, DEC and the LLC shall execute, deliver and file, as applicable, the certificates of merger and agreements and plans of merger (the "Merger Documents"), with the Secretaries of State of each of the State of Connecticut and the State of Tennessee in order to effect the Merger, in connection with which the LLC shall be the surviving entity, owned by the Owners with respective ownership interests identical to those identified on Exhibit A, and retain the tax identification number and clinic licensure of DEC. Unless the context clearly indicates otherwise, references to DEC contained in this Agreement and covering any periods following the effectiveness of the Merger and prior to the Closing shall be deemed to refer to the LLC for all such periods.

(b) The Parties shall use their commercially reasonable efforts to obtain all consents, if any, required under all agreements with Significant Payors (as defined in Section 4.11) as a result of the transactions contemplated by this Agreement, or to cause such Significant Payors to enter into new agreements with the LLC on substantially similar terms as the existing agreements between DEC and such Significant Payors, to be effective as of the Effective Time or within a reasonable time thereafter. AmSurg will be primarily responsible for any necessary re-contracting with Significant Payors or re-credentialing of the Owners with Significant Payors.

(c) The Owners shall use their commercially reasonable efforts to cause DEC to obtain all consents, licenses, permits, approvals, authorizations, orders and agreements listed on Schedule 4.16 that are required to be obtained prior to Closing.

(d) DEC will file a CON application with DPH and obtain approval from DPH for the change of ownership of the Center, as owned 62% by AmSurg, and the merger of DEC with the LLC. The parties will cooperate with one another and will use commercially reasonable efforts to obtain such CON from DPH.

(e) DEC shall have terminated that certain Management Agreement, dated August 11, 2011 by and between DEC and DEC Merritt, LLC. The termination contemplated by the foregoing sentence shall be accomplished pursuant to documentation that is acceptable to AmSurg, and without any post-Closing liability to or obligation of AmSurg or the LLC.

(f) The parties shall use their commercially reasonable efforts to obtain, prior to the Closing Date, all other governmental and third party consents required prior to the Closing Date for DEC and the parties hereto to consummate the transactions contemplated by this Agreement.

**3.3 Obligations of the Parties at the Closing.**

(a) At the Closing, AmSurg shall deliver to the Owners:

(i) By cash, check or wire transfer of immediately available funds, each such Owner's respective portion of the Purchase Price as specified on Exhibit B;

- (ii) *[Reserved]*;
  - (iii) *[Reserved]*;
  - (iv) A certified copy of the Articles of Organization of the LLC, issued by the Secretary of State of the State of Tennessee;
  - (v) The Operating Agreement of the LLC in the form of Exhibit 3.3(a)(vi) (the "Operating Agreement"), duly executed by AmSurg;
  - (vi) Original certificate of legal existence and good standing of AmSurg issued as of a recent date by the Secretary of State of the State of Tennessee; and
  - (vii) Such other certificates and documents as the Owners or their counsel may reasonably request.
- (b) At the Closing, the Owners will deliver to AmSurg:
- (i) A copy of the Merger Documents, as executed, filed with and certified by, as applicable, the Secretaries of State of each of the State of Connecticut and the State of Tennessee in connection with the Merger;
  - (ii) *[Reserved]*;
  - (iii) Such endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to AmSurg, as shall be effective to vest in AmSurg all of the Owners' title to and interest in the Purchased Interests and simultaneously with such delivery, will take such steps as may be necessary to put AmSurg in actual possession and control of the Purchased Interests;
  - (iv) *[Reserved]*;
  - (v) The First Amendment to Lease Agreement, dated the date hereof, by and between Long Ridge Medical Associates, LLC and DEC, and the Subordination, Non-Disturbance and Attornment Agreement, by and between Long Ridge Medical Associates, LLC and DEC, each duly executed by Long Ridge Medical Associates, LLC and DEC;
  - (vi) The Operating Agreement, duly executed by the Owners;
  - (vii) An updated claims history showing, at a minimum, open, closed and reserved incidents and claims involving the Center during the previous five (5) years prior to the Closing Date or since the date of opening of the Center, if sooner;
  - (viii) A CON for a change of ownership of the Center (as majority owned 62% by AmSurg) and the merger of DEC with the LLC and all other consents, licenses, permits, approvals, authorizations, orders and agreements listed on Schedule 4.16 that are reasonably necessary for the continued operation of the Center by the LLC following the Closing; and

(ix) Such other certificates and documents as AmSurg or its counsel may reasonably request.

**3.4 New License; Expenses of CON Approval.** At the Closing, the parties will file with the Connecticut DPH an application for an ambulatory surgery clinic license for the Center based on the merger of DEC into the LLC and the change in ownership of the LLC (the "New License"). The parties will cooperate with one another and will use commercially reasonable efforts to obtain the New License for the LLC. DEC shall pay the first Twenty Thousand Dollars (\$20,000) of the costs and expenses of obtaining the CON for the change of ownership of the LLC and the associated New License. AmSurg shall pay the next Twenty Thousand Dollars (\$20,000) of costs and expenses up to an amount not to exceed Forty Thousand Dollars (\$40,000), and the parties shall split any costs and expenses in excess of Forty Thousand Dollars (\$40,000), with 62% of such costs and expenses to be paid by AmSurg and 38% of such costs and expenses to be paid by DEC. Notwithstanding the foregoing, any of the foregoing costs and expenses that have not been paid as of the Closing shall be deemed to be Vendor Payments for purposes of Section 1.2(a), regardless of when invoiced. The parties shall use their commercially reasonable efforts to obtain, as promptly as practicable following the Closing Date, all other governmental and third party consents resulting from the change of ownership of DEC that are not required to be obtained prior to Closing.

#### **4. REPRESENTATIONS AND WARRANTIES BY THE OWNERS WITH RESPECT TO DEC**

The Owners, jointly and severally, represent and warrant as follows (provided that for purposes of this Article 4 and Article 5 below, "knowledge" with respect to an Owner who is an entity shall mean the actual knowledge of any governing board member and/or executive officer of such entity and, with respect to an Owner who is an individual, shall mean the actual knowledge of such individual):

**4.1 Organization.** Immediately prior to the effectiveness of the Merger, DEC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Connecticut, with full limited liability company power and authority under such laws to conduct its business as then conducted and to own, lease or operate its properties and assets as then owned, leased or operated. The Merger was duly authorized by all necessary limited liability company action on the part of the Company.

**4.2 No Violation.** The execution and delivery of this Agreement and the Operating Agreement by the Owners does not, and the consummation of the transactions contemplated hereby or thereby will not, (a) violate any provision of, or result in the creation of any lien or security interest under, or violate any provision of, or result in a requirement for any consent under, any material agreement, indenture, instrument, lease, security agreement, mortgage or other agreement to which DEC is a party or by which any of DEC's assets or properties are bound, which violation or lien would have a material adverse effect on the business or operations of DEC; (b) violate any provision of the certificate of organization or operating agreement of DEC; (c) violate any order, arbitration award, judgment, writ, injunction, decree, statute, rule or regulation applicable to DEC, which violation would have a material adverse effect on the business or operations of DEC; or (d) violate any other contractual or legal

obligation or restriction to which DEC is subject, which violation would have a material adverse effect on the business or operations of DEC.

**4.3 Expenses of Operating the Center.** Schedule 4.3 sets forth all material on-going expenses of DEC as of the Effective Date, including the expenses of operating the Center, and also reflects the manner in which the Owners currently propose to allocate the operating expenses of the Center following the Closing Date.

**4.4 Financial Information.** The Owners have delivered to AmSurg: (a) statements of charges and cash receipts for DEC by month for the year ended December 31, 2011, and the five (5) months ended May 31, 2012, (b) unaudited statements of income for DEC for the year ended December 31, 2011 and cash basis unaudited statements of income for DEC for the five (5) months ended May 31, 2012, (c) a cash basis unaudited balance sheet of DEC at May 31, 2012, (d) details of outstanding patient accounts receivable for DEC as of May 31, 2012, and (e) details of outstanding patient accounts receivable for DEC as of Closing, which shall be provided at Closing, all of which are attached as Schedule 4.4 (items (a) through (e), together with the Ongoing Financial Information as and when delivered pursuant to Section 7.1(b), hereinafter collectively referred to as "Financial Information"). The Financial Information fairly presents in all material respects the assets, liabilities, financial condition and results of operation of DEC as at the respective dates thereof and for the periods therein referred to, as prepared in accordance with historic accounting principles, and accurately reflects in all material respects the revenues and expenses of DEC for the periods covered thereby.

**4.5 Ownership of Center Assets.** Except as set forth on Schedule 4.5, DEC owns or has a valid leasehold interest in all of the assets comprising the business operations of the Center, tangible or intangible, recorded or unrecorded, of whatsoever type, kind, description or nature (the "Center Assets"), free and clear of all Encumbrances, and no conditions exist which could give rise to any such Encumbrances on the Center Assets. Schedule 4.5 contains an accurate and complete description of the tangible property of DEC which includes, but is not limited to, furniture, fixtures and equipment owned by DEC, and excludes supplies and inventory (the "Tangible Property"). The Tangible Property is reasonably sufficient for the operations of the Center as they are now being conducted. Except as otherwise disclosed in Schedule 4.5, all of the Center Assets are in good working condition and repair, normal wear and tear excepted, and are adequate for the uses for which they are intended. Schedule 4.5 also sets forth the current book value of all equipment included in the Center Assets.

**4.6 No Liabilities or Adverse Conditions.** Except as and to the extent set forth in Schedule 4.6 or reflected in the Financial Information, DEC has no liabilities or obligations of any nature except for liabilities and obligations incurred in the ordinary course of business since May 31, 2012 and which are not material in nature, whether absolute, accrued, contingent or otherwise and whether due or to become due (including without limitation liabilities for taxes and interest, penalties and other charges payable with respect thereto). Furthermore, neither DEC nor the Owners have reason to know of any basis for the assertion against DEC of any such material liability or obligation of any nature not fully reflected in the Financial Information. To the knowledge of the Owners, there are no conditions existing with respect to any of DEC's facilities, properties, assets or personnel, which might materially and adversely affect any of DEC's properties or business.

**4.7 Absence of Certain Changes.** Since May 31, 2012, except as set forth on Schedule 4.7 hereto or as contemplated by the terms of this Agreement, DEC has not:

(a) suffered any material adverse change in its working capital, financial condition, assets, liabilities or business, or suffered any material casualty loss (whether or not insured);

(b) made any change in its business or operations or in the manner of conducting its business, other than changes in the ordinary course of business;

(c) incurred any obligations or liabilities (whether absolute, accrued, contingent or otherwise and whether due or to become due), except in the ordinary course of business and consistent with past practice, or made any change in any assumptions or methods of calculating any bad debt, contingency or other reserve;

(d) paid, discharged or satisfied any claim, lien, encumbrance or liability (whether absolute, accrued, contingent or otherwise and whether due or to become due), other than claims, liens, encumbrances or liabilities:

(i) which are reflected in the Financial Information and which were paid, discharged or satisfied since the date thereof in the ordinary course of business consistent with past practice, or

(ii) which were incurred and paid, discharged or satisfied since May 31, 2012 in the ordinary course of business consistent with past practice;

(e) written off as uncollectible any notes or accounts receivable or any portion thereof, except for write-offs made in the ordinary course of business consistent with past practice;

(f) canceled any other debts or claims except in the ordinary course of business consistent with past practice, or waived any rights of substantial value;

(g) sold, transferred or conveyed any of its properties or assets, except in the ordinary course of business consistent with past practice;

(h) made any capital expenditures or commitments in excess of \$10,000 per item or \$50,000 in the aggregate for replacements or additions to property, plant, equipment or intangible capital assets;

(i) declared, paid or made or set aside for payment of, any distribution in respect of its outstanding equity interests other than distributions made in the ordinary course of business consistent with past practice or made pursuant to the terms of this Agreement, or directly or indirectly redeemed, purchased or otherwise acquired any of its equity interests;

(j) made any change in any method of accounting or accounting practice;

(k) granted any increase in the compensation of any officer, employee or agent of DEC (including without limitation any increase pursuant to any bonus, pension, profit sharing or other plan or commitment), other than increases in the ordinary course of business consistent with past practice, or adopted any such plan or other arrangement; and no such increase or the adoption of any such plan or arrangement, is planned or required, other than year-end salary adjustments consistent with past practice; and

(l) agreed, whether in writing or otherwise, to take any action described in this Section 4.7.

**4.8 Taxes.** DEC has filed all federal, state and local tax returns required to be filed by it through the Effective Date (or has obtained a valid extension therefor) and has paid all taxes and assessments (including without limitation income, excise, unemployment, social security, occupation, franchise, property, sales and use taxes, services taxes, import duties or charges, and all penalties and interest with respect thereto) due and payable therefrom. DEC has not signed any extension agreement with any taxing authority and knows of no open or questionable matters for any prior periods. All taxes and assessments relating to or affecting DEC which are due through the Effective Date have been paid.

**4.9 Litigation.** There is no claim, litigation, investigation or proceeding pending or threatened, at law or in equity, against DEC and before any court, legislative or administrative tribunal or governmental agency which questions the validity of this Agreement or the Operating Agreement or which, if adversely determined or publicly disclosed, would have a material adverse effect on the business or operations of DEC or the Center. Schedule 4.9 sets forth a true and accurate description of all claims, actions, investigations or proceedings initiated before any court, legislative or administrative tribunal or governmental agency against DEC since January 1, 2008.

**4.10 Compliance with Laws and Other Regulations.** DEC is in compliance in all material respects with all requirements of applicable laws, rules, regulations, orders, ordinances, judgments and decrees of all governmental bodies or agencies (federal, state or local) (collectively, "Laws") relating to or affecting DEC or the operations of the Center. DEC has received no notice of, or notice of any investigation of, a possible violation of any applicable Laws, or any other Law or requirement relating to or affecting DEC or the operations of the Center.

DEC has all required licenses, permits, certificates, authorizations and agreements which are required for the ownership and operation of the Center ("Licenses and Permits"), and such Licenses and Permits are listed on Schedule 4.10. DEC is in compliance in all material respects with such Licenses and Permits. The Owners know of no act or omission occurring on or before the Effective Date which would subject DEC or the Center to the reasonable likelihood of any fine or suspension of any license, permit, certificate, authorization or agreement.

**4.11 Contracts; Significant Payors.** Schedule 4.11 is a complete and accurate list of all individual payors, or group of affiliated payors, that accounted for more than five percent (5%) of the Center's revenues in any two of the previous three (3) calendar years or is expected to account for more than five percent (5%) of the Center's revenues in the current



calendar year or the next calendar year ("Significant Payors").

Except as set forth in Schedule 4.11, all material contracts, agreements and instruments, including, but not limited to, third party administrator agreements and agreements with Significant Payors, to which DEC is a party, are in full force and effect; there have been no cancellations thereof threatened nor outstanding disputes thereunder; and neither DEC nor to the Owners' knowledge, any other party thereto has, breached any provision of, nor does there exist any default by DEC or, to the Owners' knowledge, any other party thereto, or event (including the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby) which is, or with the giving of notice or the passage of time or both would be reasonably likely to become, a breach or default under the terms of any such contract, instrument or agreement.

**4.12 Accounts Receivable.** All accounts and notes receivable of DEC, whether reflected in the Financial Information or otherwise, (i) represent amounts payable for services actually provided by DEC in the ordinary course of business; (ii) to the knowledge of the Owners, are current and collectible in the ordinary course of business in accordance with their respective terms, but the Owners do not hereby guaranty the collectability of any such receivables; and (iii) are not subject to any counterclaim or set-off, other than normal discounts, allowances and bad debts consistent with past practice.

**4.13 Reports and Returns.** All reports and returns required by federal, state or municipal authorities to be filed by DEC or with respect to DEC's activities, including those with respect to the operations of the Center, have been filed and all sums heretofore due with respect to such reports and returns have been paid.

**4.14 Defaults.** DEC is not in default under, and no event has occurred which, with the giving of notice or the passage of time, or both, would result in a default under, any outstanding indenture, mortgage, or material contract, agreement or other instrument to which DEC is a party.

**4.15 Employees; Independent Contractors.**

(a) Schedule 4.15(a) sets forth the names and titles of all employees who render services at the Center and the annual rate of compensation (including bonuses) being paid to each such employee as of the most recent practicable date. The employees listed on Schedule 4.15(a) constitute all of the employees who are reasonably necessary to the continued operation of the Center as it is now being conducted.

(b) Schedule 4.15(b) hereto contains a list of each employment, bonus, deferred compensation, pension, stock option, stock appreciation right, profit sharing or retirement plan, arrangement or practice and each other agreement or fringe benefit plan, arrangement or practice applicable to such employees, whether formal or informal, whether legally binding or not and whether affecting one or more employees. Copies of each such agreement or plan have heretofore been delivered to AmSurg. DEC has no commitment, whether formal or informal, and whether legally binding or not (i) to create any additional such agreement, plan, arrangement or practice; (ii) to modify or change any such agreement,

arrangement, plan or practice; or (iii) to maintain for any period of time any such agreement, arrangement, plan or practice, except as described on Schedule 4.15(b).

(c) Schedule 4.15(c) hereto contains a list of all material services provided to DEC for which DEC contracts with third parties. Copies of each such material agreement previously have been provided to AmSurg. Schedule 4.15(c) contains a description of each such oral agreement.

**4.16 Consents and Approvals.** Except as set forth on Schedule 4.16, DEC has obtained all consents, licenses, permits, approvals, authorizations, orders and agreements from all third parties, including federal, state and local governmental units or any other entity, necessary for the authorization, execution and performance of this Agreement, or for the continued operation of the Center and governmental reimbursement of the Center following the consummation of the transactions contemplated hereby, all of which are listed on Schedule 4.16.

**4.17 Full Disclosure.** Neither this Agreement, nor any schedule, exhibit, list, certificate or other instrument or document delivered to AmSurg pursuant to this Agreement by or on behalf of the Owners or DEC, contains any untrue statement of a material fact or omits to state any material fact required to be stated herein or therein or necessary to make the statements, representations or warranties and information contained herein or therein not misleading. DEC and Owners have not withheld from AmSurg disclosure of any event, condition or fact that DEC or Owners know, or have reasonable grounds to know, may materially adversely affect the Purchased Interests, DEC or the operations of the Center.

**4.18 No Broker's Fees.** None of the Owners or DEC has done anything to cause or incur any liability or obligation for investment banking, brokerage, finder's, agent's or other fees, commissions, expenses or charges in connection with the negotiation, preparation, execution or performance of this Agreement or the consummation of the transactions contemplated hereby, and none of the Owners or DEC knows of any claim by anyone for such a fee, commission, expense or charge.

**4.19 The Owners of DEC.** The Owners listed on Exhibit A as members of DEC constitute all of the members of DEC.

## 5. REPRESENTATIONS AND WARRANTIES OF THE OWNERS

Each of the Owners, severally and not jointly, represents and warrants as follows:

**5.1 Authority; Ownership.** Such Owner has full authority to enter into and carry out the provisions of this Agreement, and this Agreement, when executed, will constitute a valid and binding legal obligation enforceable against him or her in accordance with its terms.

**5.2 No Violation.** The execution and delivery of this Agreement and the other agreements executed in connection herewith by the Owners does not, and the consummation of the transactions contemplated hereby or thereby will not (a) violate any provision of, or result in the creation of any lien or security interest under, any agreement, indenture, instrument, lease, security agreement, mortgage or lien to which such Owner is a party or by which any of such Owner's assets or properties are bound; (b) violate any order, arbitration award, judgment, writ,

injunction, decree, statute, rule or regulation applicable to such Owner; or (c) violate any other contractual or legal obligation or restriction to which such Owner is subject.

**5.3 Licenses and Health Care Matters.** If such Owner is a physician, he or she maintains a current license to practice medicine in the State of Connecticut, has not been excluded from participation in the Medicare program or any other governmental health care program for any reason, and has not been convicted of any crime in violation of any state or Federal law related to health care matters. Such Owner has no knowledge of any circumstances or conditions that could have a material adverse impact on the operations of the Center or the medical practices of the Owners (other than conditions which might have a material adverse effect on the health care industry in general). Such Owner knows of no relationship of any Owner that would violate the provisions of Section 7.7 hereof.

**5.4 Title to Purchased Interests.** Each Owner has good and valid title to the Purchased Interests being sold by such Owner to AmSurg under this Agreement, free and clear of all mortgages, pledges, liens, security interests, charges, claims, encumbrances and rights of third parties, and no conditions exist which could give rise to any such mortgage, pledge, lien, security interest, defect, charge, encumbrance on, or right of any such third party to, such Purchased Interests.

## **6. REPRESENTATIONS AND WARRANTIES OF AMSURG**

AmSurg represents and warrants as follows:

**6.1 Organization.** AmSurg is a corporation duly organized, validly existing and in good standing under the laws of the State of Tennessee. AmSurg has full power and authority to carry on its business as now conducted and to own, lease or operate its properties and assets as now owned, leased or operated.

**6.2 Authorization.** AmSurg has full power and authority to enter into this Agreement and perform its obligations hereunder and carry out the transactions contemplated hereby. The execution, delivery and performance by AmSurg of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary corporate action. This Agreement, when executed, will constitute a legal, valid and binding obligation of AmSurg enforceable against it in accordance with its terms.

**6.3 No Violation.** The execution and delivery of this Agreement by AmSurg does not, and the consummation of the transactions contemplated hereby will not, (a) violate any provision of, or result in the creation of any lien or security interest under, any agreement, indenture, instrument, lease, security agreement, mortgage or lien to which AmSurg or any of its affiliates is a party or by which any of their respective assets or properties are bound, which violation or lien would have a material adverse effect on the ability of AmSurg to consummate the transactions and perform the obligations contemplated hereby, or on the operations of the LLC following the Closing Date; (b) violate any provision of the Charter or Bylaws of AmSurg or any of its affiliates to the extent any such violation may have a material adverse effect on the ability of AmSurg to consummate the transactions and perform the obligations contemplated hereby, or on the operations of the LLC following the Closing Date; (c) violate any order,

arbitration award, judgment, writ, injunction, decree, statute, rule or regulation applicable to AmSurg or any of its affiliates, which violation would have a material adverse effect on the ability of AmSurg to consummate the transactions and perform the obligations contemplated hereby, or on the operations of the LLC following the Closing Date; or (d) violate any other contractual or legal obligation or restriction to which AmSurg or any of its affiliates is subject, which violation would have a material adverse effect on the ability of AmSurg to consummate the transactions and perform the obligations contemplated hereby, or on the operations of the LLC following the Closing Date.

**6.4 Litigation.** There is no claim, litigation, investigation or proceeding pending or, to AmSurg's knowledge, threatened against AmSurg or any of its affiliates at law or in equity or before any court, legislative or administrative tribunal or governmental agency which questions the validity of this Agreement or which, if adversely determined or publicly disclosed, would have a material adverse effect on the ability of AmSurg to consummate the transactions and perform the obligations contemplated hereby.

**6.5 Full Disclosure.** Neither this Agreement, nor any Schedule, exhibit, list, certificate or other instrument or document delivered to DEC or the Owners pursuant to this Agreement by or on behalf of AmSurg contains any untrue statement of a material fact or omits to state any material fact required to be stated herein or therein in order to make the statements, representations or warranties contained herein or therein not misleading.

**6.6 No Broker's Fees.** Neither AmSurg nor any of its affiliates has done anything to cause or incur any liability or obligation for investment banking, brokerage, finder's, agent's or other fees, commissions, expenses or charges in connection with the negotiation, preparation, execution or performance of this Agreement or the consummation of the transactions contemplated hereby, and AmSurg does not know of any claim by anyone for such a fee, commission, expense or charge.

**6.7 Accredited Investor.** AmSurg is an "accredited investor" as such term is defined in Regulation D of the Securities Act of 1933, as amended, and will acquire the Purchased Interests for its own account and not with a view to a sale or distribution of thereof in violation of the Securities Act of 1933, as amended, and the rules and regulations thereunder, any applicable blue sky laws or any other applicable securities laws. AmSurg has sufficient knowledge and experience in financial, healthcare and business matters to be capable of evaluating the merits and risks of its investment in DEC, is able to bear the economic risks of its investment and participation in DEC, and is financially able to hold the Purchased Interests for an indefinite period of time and to suffer a complete loss of such investment.

## **7. COVENANTS AND AGREEMENTS OF THE OWNERS**

The Owners covenant and agree that from the Effective Date until the Closing, and thereafter if so specified, they will fulfill the following covenants and agreements unless otherwise consented to by AmSurg in writing:

### **7.1 Access; Further Assurances.**

(a) The Owners will accord to AmSurg, its counsel, accountants and other representatives, from the Effective Date and at any time until the Closing, reasonable access on prior written notice to all of the properties, books, contracts, commitments, financial information and records of the Center, and will furnish AmSurg during such period with all such information concerning the business and operations of the Center, as AmSurg reasonably may request. At any time and from time to time after the Closing, at AmSurg's request and expense (but without further consideration hereunder), the Owners agree to execute and deliver such certificates and documents as may be reasonably required in connection with any audit of the Center or its operations.

(b) From the Effective Date until the Closing, as soon as reasonably practicable after the end of each quarter, as applicable, but not later than the 15th day of the next succeeding month, the Owners will deliver to AmSurg an unaudited statement of income for DEC for the quarter and the period then ended, and an unaudited balance sheet and a detail of patient accounts receivable for the Center as at the quarter then ended ("Ongoing Quarterly Financial Information"). In addition, as soon as reasonably practicable after the end of each month, but not later than the 15th day of the next succeeding month, the Owners will deliver to AmSurg a statement of (i) the number of procedures performed, (ii) the billed charges, and (iii) the cash collections, all with respect to the prior month ("Ongoing Monthly Financial Information") (the Ongoing Quarterly Financial Information and Ongoing Monthly Financial Information are collectively referred to as the "Ongoing Financial Information"). All such Ongoing Financial Information shall be prepared in accordance with the historical accounting practices of DEC.

(c) At any time and from time to time after the Closing, at AmSurg's request and expense (but without further consideration hereunder), the Owners will execute and deliver such other instruments of sale, transfer, conveyance, assignment and delivery and confirmation and take such action as AmSurg may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign to AmSurg and to place AmSurg in possession and control of and to confirm AmSurg's title to, the Purchased Interests, and to assist AmSurg in exercising all rights and enjoying all benefits with respect thereto.

## **7.2 Confidentiality.**

(a) In the event the transactions contemplated by this Agreement are not consummated for any reason, the Owners promptly will return to AmSurg all records and information provided to the Owners from AmSurg, and shall cause DEC and the LLC to return all records and information provided to any such entity from AmSurg, and the Owners will, and shall cause DEC and the LLC to, treat all such records and information as confidential.

(b) Except as otherwise required by law (including in connection with the CON application filed with DPH with respect to the transactions contemplated hereby), the Owners will not, and shall cause DEC and the LLC not to, disclose at any time to any other person not an employee, agent or representative of AmSurg, DEC or the LLC (or a person otherwise involved in the carrying out of the transactions contemplated by this Agreement), nor make any public announcement of, the transactions or terms of the transactions contemplated by this Agreement.

(c) The provisions of this Section 7.2 shall survive a termination of this Agreement pursuant to Section 12.1 below.

**7.3 Conduct of Business Pending the Closing.** From the Effective Date until the Closing, and except as otherwise consented to by AmSurg in writing, DEC shall not, and the Owners shall cause DEC not to:

(a) fail to maintain in effect insurance coverage of the assets of the Center at minimum levels consistent with past practices and as in effect immediately prior to the Effective Date; or

(b) fail to use good faith efforts to (i) maintain the assets of the Center in their present condition, reasonable wear and tear excepted, (ii) comply with all applicable laws, rules and regulations of governmental agencies or authorities, and (iii) operate its business as a going concern consistent with prior practice and in the ordinary course of business and in a manner reasonably necessary to maintain the goodwill of the Center.

**7.4 Insurance.** At AmSurg's option, as of the Closing, either (a) AmSurg and its affiliates shall be included as additional insureds on the LLC's general property and professional/general liability insurance policies, or (b) AmSurg shall arrange for the LLC to purchase such insurance coverage with AmSurg, its affiliates and the LLC as named insureds; provided, however, that AmSurg may select any combination of subparagraphs (a) and (b) with respect to each type of insurance coverage (e.g., property, professional liability insurance). If AmSurg implements subparagraph (a) with respect to a particular type of insurance coverage with reasonable prior notice to the LLC, then the LLC will provide AmSurg, at AmSurg's expense, with a certificate of insurance at the Closing, and thereafter annually as requested in writing by AmSurg.

**7.5 Notice of Adverse Change.** The Owners will promptly advise AmSurg in writing of any material adverse change in the business or assets of the Center from the date of this Agreement to the Closing Date.

**7.6 Schedules.** The Owners shall have the continuing obligation to supplement or amend promptly the Schedules being delivered by the Owners pursuant to this Agreement with respect to any matter hereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be set forth or described in these Schedules.

**7.7 Ownership and Investment Restrictions.** No Owner or any affiliate of any Owner shall, until the later of (i) five (5) years from the date of this Agreement, or (ii) with respect to any Owner who is a member of the LLC, two (2) years after such Owner ceases to be a member of the LLC:

(a) directly or indirectly have an ownership interest in, or manage, lease, develop or otherwise have any financial interest in any business or entity competing or planning to compete with the LLC (including, but not limited to, any ambulatory surgery center or any physician office in which surgical procedures are performed and for which facility fees,

tray fees or other fees in addition to standard professional fees are charged) within a twenty-five (25) mile radius of the Center (the "Market Area"), or

(b) in the case of a physician, become an employee of a hospital or an affiliate of a hospital that is located within the Market Area, or enter into any contract or other arrangement (whether as a result of his or her employment or otherwise) that requires or incentivizes him or her to perform procedures at any hospital or facility affiliated with a hospital in the Market Area; provided that an Owner or affiliate of an Owner may become an employee of a hospital or hospital affiliate and may receive compensation paid by such a hospital or affiliate that does not require such Owner or affiliate to perform ambulatory surgical procedures at the employing hospital or affiliate and which compensation is not based, in whole or in part, on ambulatory surgery referrals to or procedures performed at the employing hospital or affiliate.

The foregoing shall not prohibit any Owner or any affiliate of any Owner from (i) owning shares of capital stock constituting less than one percent (1%) of the outstanding capital stock of any corporation whose common stock is traded on a national securities exchange, (ii) practicing medicine or performing surgical procedures at any facility, or (iii) receiving a reasonable fee in exchange for providing medical director services or call coverage to a tertiary hospital. The parties acknowledge and agree that this Section 7.7 does not require Owners or their affiliates who are physicians to perform surgical procedures at the Center or to refer patients to the Center, and imposes no restrictions on where such procedures are performed or where referrals are made.

Each Owner acknowledges and agrees that the enforcement of the provisions of this Section 7.7 against him or her would not prevent him or her from engaging in his or her profession or the practice of medicine.

The parties recognize and acknowledge that the ascertainment of damages in the event of a breach of this Section 7.7 would be difficult, and agree that the other party hereto, in addition to all other remedies it may have, shall have the right to injunctive relief if there is such a breach. Notwithstanding the foregoing, in the event any Owner or any affiliate of any Owner breaches the provisions of Section 7.7(b), such person shall pay to the LLC, as liquidated damages, an amount equal to (a) five (5) times the LLC Profit (as defined in the Operating Agreement) plus the LLC's interest expense for the preceding twelve (12) calendar months, minus (b) the LLC's outstanding Principal Indebtedness (as defined in the Operating Agreement), with this amount multiplied by such person's pro rata direct or indirect percentage ownership interest in the LLC (or such person's ownership interest in the LLC immediately prior to the termination of his or her membership in the LLC), it being acknowledged by the parties that the damages to the LLC in such event would be difficult to ascertain.

This Section 7.7 shall terminate in its entirety upon a termination of this Agreement in accordance with Section 12.1 below.

**7.8 Section 754 Election.** The Owners agree that the LLC will make an election under § 754 of the Internal Revenue Code effective for the taxable period ending on the Closing Date.

**7.9 Employment Agreements.** From the date of this Agreement until Closing, neither DEC nor the LLC shall enter into any employment agreement with any employee without the prior written consent of AmSurg, which may be granted or withheld in AmSurg's sole discretion.

## **8. COVENANTS AND AGREEMENTS OF AMSURG**

AmSurg further covenants and agrees that from the Effective Date until the Closing, unless otherwise consented to by the Owners in writing, it will fulfill the following covenants and agreements:

(a) In the event the transactions contemplated by this Agreement are not consummated for any reason, AmSurg promptly will return to the Owners all records and information provided to AmSurg from the Owners, DEC or the LLC, and shall cause its affiliates to return all records and information provided to any such entity from the Owners, DEC or the LLC, and AmSurg will, and shall cause its affiliates to, treat all such records and information as confidential.

(b) Except as otherwise required by law, AmSurg will not, and shall cause its affiliates to not, disclose at any time to any other person not an employee of AmSurg, DEC or the LLC (or a person otherwise involved in the carrying out of the transactions contemplated by this Agreement), nor make any public announcement of, the transactions or terms of the transactions contemplated by this Agreement.

(c) The provisions of this Section 8.1 shall survive a termination of this Agreement pursuant to Section 12.1 below.

## **9. CONDITIONS TO AMSURG'S OBLIGATIONS**

AmSurg shall not be obligated to consummate the transactions contemplated hereby, unless each of the following conditions is fulfilled or performed (unless expressly waived in writing by AmSurg) prior to or at the Closing:

**9.1 Compliance.** The representations and warranties made by the Owners in this Agreement and the statements contained in the Schedules attached hereto or in any instrument, list, certificate or writing delivered by the Owners pursuant to this Agreement shall be true when made and at and as of the time of the Closing as though such representations and warranties were made at and as of the Closing.

**9.2 Performance by the Owners.** The Owners shall have performed and complied with all covenants, agreements, obligations and conditions required by this Agreement to be so complied with or performed by each of them.

**9.3 Delivery of Documents.** The Owners shall have delivered to AmSurg the certificates, instruments and other documents required to be delivered by them pursuant to Section 3.3(b).



**9.4 Material Adverse Effect.** Since the date of this Agreement, there shall not have occurred any event or condition of any character which has resulted in a material adverse effect, or may reasonably be expected to result in a material adverse effect, on the business, operations, financial condition or prospects of DEC, the LLC or the Center.

## 10. CONDITIONS TO THE OWNERS' OBLIGATIONS

The Owners shall not be obligated to consummate the transactions contemplated hereby unless each of the following conditions is fulfilled or performed (unless expressly waived in writing by the Owners) prior to or at the Closing:

**10.1 Compliance.** The representations and warranties made by AmSurg in this Agreement and the statements contained in the Schedules attached hereto or in any instrument, list, certificate or writing delivered by AmSurg pursuant to this Agreement shall be true when made and at and as of the time of the Closing as though such representations and warranties were made at and as of the Closing.

**10.2 Performance by AmSurg.** AmSurg shall have performed and complied with all agreements, obligations and conditions required by this Agreement to be so complied with or performed by AmSurg.

**10.3 Delivery of Documents.** AmSurg shall have delivered to the Owners the certificates, instruments and other documents required to be delivered by AmSurg pursuant to Section 3.3(a).

## 11. INDEMNIFICATION

**11.1 Indemnification by the Owners.** The Owners, jointly and severally (except with respect to any breach of the representations and warranties contained in Article 5 and any violation of Section 7.7, for which Owners shall be severally liable for solely their own action or the actions of their affiliates), hereby agree to defend, indemnify and hold harmless AmSurg and shall reimburse AmSurg for, from and against each claim, loss, liability, cost and expense (including without limitation interest, penalties, costs of preparation and investigation, and the reasonable fees, disbursements and expenses of attorneys, accountants and other professional advisors) (collectively, "Losses"), directly or indirectly relating to, resulting from or arising out of:

(a) The business and operations of DEC and the Center prior to the Closing Date.

(b) Any untrue representation, misrepresentation, breach of warranty or non-fulfillment of any covenant, agreement or other obligation by or of any Owner contained herein, any Schedule hereto or in any certificate, document or instrument delivered to AmSurg pursuant hereto.

(c) Any tax liability of DEC or the LLC not previously paid, which may at any time be asserted or assessed against DEC or the LLC for any event or period prior to

the Closing Date (regardless of whether the possibility of the assertion or assessment of any such tax liability shall have been disclosed to AmSurg at or prior to the Closing).

(d) Liability for any amounts owed by DEC or the LLC to any governmental third party or private payors because of overpayments to DEC or the LLC for services rendered to patients prior to the Effective Time, which liability is due to a recomputation of rates, field audit adjustments, overpayments or otherwise.

(e) Any other Loss incidental to any of the foregoing.

**11.2 Indemnification by AmSurg.** AmSurg hereby agrees to defend, indemnify and hold harmless the Owners, and shall reimburse the Owners for, from and against Losses directly or indirectly relating to, resulting from or arising out of:

(a) Any untrue representation, misrepresentation, breach of warranty or non-fulfillment of any covenant, agreement or other obligation by or of AmSurg, contained herein, or in any certificate, document or instrument delivered to the Owners pursuant hereto.

(b) Any other Loss incidental to the foregoing.

**11.3 Procedure.**

(a) The indemnified party shall promptly notify the indemnifying party of any claim, demand, action or proceeding for which indemnification will be sought under Sections 11.1 or 11.2 of this Agreement, and, if such claim, demand, action or proceeding is a third party claim, demand, action or proceeding, the indemnifying party will have the right at its expense to assume the defense thereof using counsel reasonably acceptable to the indemnified party. The indemnified party shall have the right to participate, at its own expense, with respect to any such third party claim, demand, action or proceeding. In connection with any such third party claim, demand, action or proceeding, AmSurg, the LLC and the Owners shall cooperate with each other and provide each other with access to relevant books and records in their possession. No such third party claim, demand, action or proceeding shall be settled without the prior written consent of the indemnified party. If a firm written offer is made to settle any such third party claim, demand, action or proceeding and the indemnifying party proposes to accept such settlement and the indemnified party refuses to consent to such settlement, then: (i) the indemnifying party shall be excused from, and the indemnified party shall be solely responsible for, all further defense of such third party claim, demand, action or proceeding; and (ii) the maximum liability of the indemnifying party relating to such third party claim, demand, action or proceeding shall be the amount of the proposed settlement if the amount thereafter recovered from the indemnified party on such third party claim, demand, action or proceeding is greater than the amount of the proposed settlement.

(b) Notwithstanding the foregoing, no Owner shall be required to indemnify AmSurg for any amount in excess of his or her respective portion of the Purchase Price.

(c) Notwithstanding the foregoing, (i) the Owners shall not be obligated to make any indemnification under Section 11.1 unless the aggregate amount of Losses

exceeds \$50,000 (the "Basket"), and such indemnification with respect to such Losses shall be made by the Owners only to the extent of such excess over the Basket; provided, that the Basket shall not apply to any claim that would constitute a breach of the representation and warranty contained in Section 4.19, and (ii) AmSurg shall not be obligated to make any indemnification under Section 11.2 unless the aggregate amount of Losses exceeds the Basket, and such indemnification with respect to such Losses shall be made by AmSurg only to the extent of such excess over the Basket.

## 12. TERMINATION OF AGREEMENT; SURVIVAL

**12.1 Termination.** This Agreement shall terminate in its entirety upon written notice from one party to the other in the event (i) that the transactions contemplated by this Agreement have not been consummated on or before January 1, 2013, or such other date as the parties may mutually agree, (ii) of a material adverse effect pursuant to Section 9.4, provided that the parties may agree to close over any such material adverse effect with no reduction in Purchase Price hereunder, or to close subject to negotiation of a mutually agreeable adjustment to the Purchase Price, or (iii) of a material breach of this Agreement, provided that the breaching party is provided with written notice of the material breach and fails to cure such breach within thirty (30) days following receipt of such notice. In the event this Agreement is terminated pursuant to subsection (iii) above due to a material breach by AmSurg, AmSurg will promptly reimburse DEC and the Owners for the reasonable costs and expenses, including, without limitation, attorney's fees, incurred by DEC and/or the Owners in connection with the transactions contemplated hereby.

**12.2 Survival of Representations and Warranties.** The representations and warranties contained herein shall survive the Closing Date and any investigation made by or on behalf of any party hereto, and shall survive for a period of twenty-four (24) months after the Closing Date, except for any Losses described in (a) Section 11.1(a) and Section 11.1(b) with respect to a breach of the representations and warranties contained in Sections 4.6 and 4.9, with respect to professional malpractice claims arising before the Closing Date, Section 4.19 and Section 5.4, which shall not terminate; (b) Section 11.1(c), including any waivers thereof, which shall survive for the applicable statute of limitations; and (c) Section 11.1(d), which shall survive for the applicable statute of limitations.

**12.3 Remedies Cumulative.** The remedies provided herein shall be cumulative and shall not preclude the assertion by any party hereto of any other rights or the seeking of any other remedies against the other parties hereto.

## 13. MISCELLANEOUS

**13.1 Expenses.** Except as otherwise provided herein, all fees and expenses incurred by DEC and the Owners, including without limitation legal fees and expenses, in connection with this Agreement will be borne by the Owners and all fees and expenses incurred by AmSurg, including without limitation legal fees and expenses, in connection with this Agreement will be borne by AmSurg.

**13.2 Assignability; Parties in Interest.** No party may assign, transfer or otherwise dispose of any of its respective rights hereunder without the prior written consent of the other parties hereto; provided, however, that with the prior written approval of a majority of the Owners (such approval not to be unreasonably withheld, denied or delayed), AmSurg may assign this Agreement to an affiliate. All the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective heirs, successors, assigns and legal or personal representatives of the parties hereto.

**13.3 Entire Agreement; Amendments; Waiver.** This Agreement, including the exhibits, Schedules, lists and other documents and writings referred to herein or delivered pursuant hereto, which form a part hereof, contains the entire understanding of the parties with respect to its subject matter. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein or therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to its subject matter. This Agreement may be amended only by a written instrument duly executed by all parties or their respective heirs, successors, assigns or legal personal representatives. Any condition to a party's obligations hereunder may be waived but only by a written instrument signed by the party entitled to the benefits thereof. The failure or delay of any party at any time or times to require performance of any provision or to exercise its rights with respect to any provision hereof, shall in no manner operate as a waiver of or affect such party's right at a later time to enforce the same.

**13.4 Severability.** The invalidity of any term or terms of this Agreement shall not affect any other term of this Agreement, which shall remain in full force and effect.

**13.5 Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given three (3) days following delivery or mail (registered or certified mail, postage prepaid, return receipt requested, by overnight courier service or by facsimile) as follows:

If to the Owners:

Diagnostic Endoscopy, LLC  
778 Long Ridge Road  
Stamford, CT 06902  
Attn: \_\_\_\_\_, M.D.  
Fax: \_\_\_\_\_

With a copy to:

Bernstein, Volpe & McKeon  
105 Court Street  
New Haven, CT 06902  
Attn: Michele M. Volpe, Esq.  
Fax: 203-777-5806

If to AmSurg:

AmSurg Holdings, Inc.  
20 Burton Hills Boulevard  
Nashville, TN 37215  
Attn: Christopher R. Kelly  
Fax: (615) 665-0755

With a copy to:

Bass, Berry & Sims PLC  
150 Third Avenue South, Suite 2800  
Nashville, TN 37201  
Attn: J. James Jenkins, Jr., Esq.  
Fax: (615) 742-2736

or to such other address as any party may have furnished to the others in writing in accordance herewith, except that notices of change of address shall only be effective upon receipt.

**13.6 Section and Other Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**13.7 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; provided, however, that the several executed counterparts shall together have been signed by AmSurg and each of the Owners. All of such executed counterparts shall constitute one and the same instrument.

**13.8 Parties in Interest.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. The parties acknowledge that they have independently negotiated the provisions of this Agreement, that they have relied upon their own counsel as to matters of law and application and that neither party has relied on the other party with regard to such matters. The parties expressly agree that there shall be no presumption created as a result of either party having prepared in whole or in part any provisions of this Agreement.

**13.9 Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee, without regard to its conflict of laws rules.

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

**AMSURG HOLDINGS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**OWNERS:**

\_\_\_\_\_  
Stuart Waldstreicher, MD

\_\_\_\_\_  
Peter Gardner, MD

\_\_\_\_\_  
Ronald Cirillo, MD

\_\_\_\_\_  
William Pintauro, MD

\_\_\_\_\_  
Neda Khaghan, MD

\_\_\_\_\_  
Felice Zwas, MD

\_\_\_\_\_  
Nelson Bonheim, MD

\_\_\_\_\_  
Alan Selkin, MD

DRAFT

EXHIBIT A

Stuart Waldstreicher, MD	12.5%
Peter Gardner, MD	12.5%
Ronald Cirillo, MD	12.5%
William Pintauro, MD	12.5%
Neda Khaghan, MD	12.5%
Felice Zwas, MD	12.5%
Nelson Bonheim, MD	12.5%
Alan Selkin, MD	12.5%

DRAFT

EXHIBIT B

Stuart Waldstreicher, MD	7.75%
Peter Gardner, MD	7.75%
Ronald Cirillo, MD	7.75%
William Pintauro, MD	7.75%
Neda Khaghan, MD	7.75%
Felice Zwas, MD	7.75%
Nelson Bonheim, MD	7.75%
Alan Selkin, MD	7.75%

DRAFT



EXHIBIT 3.3(a)(vi)  
Operating Agreement of the LLC

[Attached]

DRAFT

**Attachment N**

**Copy of the Operating Agreement**

**OPERATING AGREEMENT OF  
DIAGNOSTIC ENDOSCOPY, LLC**

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DRAFT

THIS OPERATING AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2012, by and between AmSurg Holdings, Inc., a Tennessee corporation ("AmSurg"), and each of the other persons listed as "Owners" on the signature page to this Agreement ("Owners") (each of AmSurg and Owners, together with the other persons who may become members under the terms of this Agreement, a "Member" and collectively, the "Members").

**WITNESSETH:**

**WHEREAS**, the Members caused to be formed a limited liability company under and pursuant to the Act (as defined below) to conduct certain business as a limited liability company and desire to set forth their mutual rights and obligations in this Agreement; and

**WHEREAS**, Diagnostic Endoscopy, LLC, a Connecticut limited liability company, recently merged with and into the LLC, and the Owners have sold to AmSurg a portion of their membership interests in the LLC pursuant to a Membership Interest Purchase Agreement, dated the date hereof.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and undertakings hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

**1. DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings set forth below:

1.1. "**Act**" means the Tennessee Revised Limited Liability Company Act, being Sections 48-249-101 *et seq.* of the Tennessee Code Annotated, as amended from time to time, and any corresponding provisions of any successor legislation.

1.2. "**Affiliate,**" with respect to any individual or Entity, means any individual or other Entity directly or indirectly controlling, controlled by or under common control with such individual or Entity.

1.3. "**Affiliated Physician**" means any individual physician who directly or indirectly through another Entity has an ownership interest in the LLC, is an Immediate Family Member of any individual who directly or indirectly through another Entity has an ownership interest in the LLC, or is a grantor, trustee or beneficiary of any trust that is a Member.

1.4. "**Agent**" means any agent of the LLC, including any officer, director,

employee, independent contractor, or agent of a Member acting on behalf of the LLC.

1.5. "**Agreement**" means this Operating Agreement, as amended from time to time.

1.6. "**AmSurg**" has the meaning set forth in the introductory paragraph hereof.

1.7. "**AmSurg Corp.**" means AmSurg Corp., a Tennessee corporation and the sole shareholder of AmSurg.

1.8. "**Articles of Organization**" means the Articles of Organization of the LLC filed with the Secretary of State of the State of Tennessee, as amended from time to time.

1.9. "**Available Cash Flow**" means all cash funds of the LLC on hand at the end of each month, less (a) provision for payment of all outstanding and unpaid current cash obligations of the LLC at the end of such month (including those which are in dispute) and (b) provisions for reserves reasonably determined by the Board for anticipated operating expenses, capital expenditures and other contingencies (which may include debt service on LLC indebtedness and fees payable to Affiliates); provided, however, that proceeds from the disposition of all or substantially all of the LLC's capital assets shall not be included in Available Cash Flow.

1.10. "**Board**" means the Board of Directors of the LLC.

1.11. "**Book Capital Account**" has the meaning given to such term in Section 4.3 hereof.

1.12. "**Capital Contribution**" in respect of any Member means the amount of all cash and other property, tangible or intangible, contributed by such Member to the capital of the LLC. The initial capital account balance for each Member shall be as set forth on Exhibit A.

1.13. "**Center**" means the ambulatory surgery center operated by the LLC and

located in Stamford, Connecticut, including the real property, or leasehold improvements, furniture, fixtures, the Equipment, books, records, supplies, accounts receivable, goodwill, other intangibles and other assets used in its operation.

1.14. **"Code"** means the Internal Revenue Code of 1986, as amended from time to time, any corresponding provisions of any successor legislation, and the regulations adopted thereunder.

1.15. **"Director"** means, individually, any natural person serving on the Board.

1.16. **"Dissolution Event"** has the meaning given to such term in Section 13.2 hereof.

1.17. **"Entity"** means any corporation, partnership, trust, limited liability company or other entity.

1.18. **"Equipment"** means the equipment used in connection with the operation of the Center.

1.19. **"Financial Rights"** means a Member's rights as a member of the LLC (i) to share in the profits and losses of the LLC to the extent provided in this Agreement and (ii) to share in distributions to the extent provided in this Agreement.

1.20. **"Fundamental Regulatory Change"** means any change in federal or state law or regulation that results in (a) the referral of Medicare or any other patients to the Center by Owners, or the submission of claims to Medicare for services performed by or at the direction of Owners, becoming illegal, (b) the existence of a substantial likelihood that the receipt of cash distributions from the LLC to Owners is or will be found to be in violation of federal or state law, or (c) the ownership by Owners of Membership Interests in the LLC becoming illegal.

1.21. **"Governance Rights"** means all of a Member's rights as a member of the LLC other than Financial Rights and the right to assign Financial Rights.

1.22. **"Immediate Family Member"** means an individual's spouse, siblings, lineal ancestors and lineal descendants and shall include step relations.

1.23. **"Information"** has the meaning given to such term in Section 8.10 hereof.

1.24. **"LLC"** means Diagnostic Endoscopy, LLC, a Tennessee limited liability company.

1.25. **"LLC Profit"** means net income of the LLC for the applicable period determined on an accrual basis in accordance with generally accepted accounting principles; provided, that in determining LLC Profit, any net income of the LLC attributable to direct or indirect referrals from procedures performed by or other business generated by all Terminating Owners (as hereinafter defined) and their Affiliates shall be excluded from the net income of the LLC.

1.26. **"Market Area"** has the meaning given to such term in Section 8.2 hereof.

1.27. **"Medical Director"** means the person appointed by Owners and approved by the Board pursuant to Section 8.3.1 to provide medical supervision and to coordinate professional and clinical activities at the Center.

1.28. **"Members"** has the meaning set forth in the introductory paragraph hereof.

1.29. **"Membership Interest"** means a Member's interest in the LLC, which when expressed as a percentage of all Membership Interests in the LLC shall be equal to such Member's Membership Percentage. The Membership Interest shall consist of (a) the Member's Financial Rights, (b) the Member's right to assign Financial Rights to

the extent permitted under this Agreement, and (c) the Member's Governance Rights.

1.30. **"Membership Percentage"** means the percentage interest of a Member as shown on Exhibit A, as amended from time to time as provided in Section 4.8 or 12.9 hereof or as otherwise required by this Agreement or the Code.

1.31. **"New Member"** has the meaning given such term in Section 12.7 hereof.

1.32. **"Officers"** means the President, Vice Presidents, Treasurer, Secretary, and any other person appointed to be an officer by the Board of the LLC.

1.33. **"Owners"** has the meaning set forth in the introductory paragraph hereof.

1.34. **"Performance Improvement Chairman"** means the person appointed by Owners and approved by the Board to provide oversight and coordinate the development and operation of the Center's performance improvement program.

1.35. **"Prime Rate"** means that rate of interest equal to the prime rate as published from time to time by SunTrust Bank in Nashville, Tennessee, or any successor thereto.

1.36. **"Principal Indebtedness"** means the principal amount of the LLC's indebtedness for borrowed money plus indebtedness for capitalized leases.

1.37. **"Responsible Person"** has the meaning given to such term in Section 48-249-115(a)(6) of the Act.

1.38. **"Successor"** means a Member's executor, administrator, guardian, conservator, other legal representative or successor in interest.

1.39. **"Tax Capital Account"** has the meaning given to such term in Section 4.4 hereof.

1.40. **"Tax Matters Member"** has the meaning given to such term in Section 11.6 hereof and shall also mean the "tax matters partner" as that term is used in the Code.

1.41. **"Treasury Regulations"** includes proposed, temporary and final regulations promulgated under the Code.

1.42. **"Triggering Event"** has the meaning given to such term in Section 8.11 hereof.

1.43. **"Triggering Event Date"** means the last day of the calendar month immediately preceding the month during which a Triggering Event occurs.

## 2. ORGANIZATION

2.1. **Formation; Effective Date.** The parties have formed the LLC by filing Articles of Organization and a Certificate of Merger with the Secretary of State of the State of Tennessee. This Agreement shall become effective upon execution by the Members as of the date first above written.

2.2. **Adoption of Agreement.** The Members hereby adopt this Agreement as the operating agreement of the LLC, as the term "operating agreement" is used in the Act, to set forth the rules, regulations and provisions regarding the management of the business of the LLC, the governance of the LLC, the conduct of its business and the rights and privileges of its members. The operating agreement of the LLC shall be in writing, and the terms of the operating agreement shall be as set forth in this Agreement.

2.3. **Name.** The name of the LLC shall be Diagnostic Endoscopy, LLC. The LLC may adopt and conduct its business under such assumed or trade names as the Members may from time to time determine. The LLC shall file any assumed or fictitious name certificates as may be required to conduct business in any state.

2.4. **Principal Place of Business.** The initial registered agent of the LLC shall be Claire M. Gulmi. The initial registered office and the principal executive office of the LLC shall be 20 Burton Hills Boulevard, Davidson County, Nashville, Tennessee 37215.

### 3. PURPOSES AND POWERS

3.1. **Purposes.** The purposes of the LLC shall be to own and operate the Center and to carry on any and all activities necessary, proper, convenient or advisable in connection therewith.

3.2. **Powers.** The LLC may exercise all powers necessary or convenient to carry out its business and affairs and to effectuate the purposes set forth in Section 3.1 hereof which may be legally exercised by limited liability companies under the Act.

3.3. **Independent Medical Judgment.** 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. Further, nothing contained herein requires any practicing physician with staff privileges at the Center to use or recommend the use of facilities or services owned, operated or provided by the LLC.

### 4. CAPITAL CONTRIBUTIONS AND MEMBERSHIP INTERESTS

4.1. **Capital Contribution.** Each Member shall be credited with having contributed capital to the LLC in the amount set forth opposite such Member's name on Exhibit A hereto.

4.2. **Additional Contributions.** Members shall make additional Capital Contributions as may be determined from time to time by the Board in an amount proportional to their Membership Percentages. The timing, amount and terms

of such additional Capital Contributions shall be determined by the Board. The Capital Contributions of each Member shall be made on the same terms and conditions.

4.3. **Book Capital Accounts.** Each Member shall have a capital account to which the fair market value of such Member's Capital Contribution shall be credited (the "Book Capital Account"). Each Member's share of the income, including tax-exempt income, expenses, gain or loss of the LLC shall be charged or credited to such Member's Book Capital Account. All distributions to a Member shall be charged to such Member's Book Capital Account.

Any Capital Contributions made solely by one Member or made out of proportion to the Membership Percentages shall be treated as a loan to the LLC and shall not affect the balance of the Book Capital Accounts.

4.4. **Tax Capital Accounts.** The capital accounts for the Members for federal income tax purposes (the "Tax Capital Accounts") shall be maintained and adjusted in accordance with the principles set forth in Treasury Regulation Section 1.704-1(b)(2)(iv), and the items of income, profit, gain, expenditures, deductions, losses, distributions and contributions which increase or decrease such Tax Capital Accounts shall be those items which, pursuant to such provision, affect the balance of capital accounts.

Any Capital Contributions made solely by one Member or made out of proportion to the Membership Percentages shall be treated as a loan to the LLC and shall not affect the balance of the Tax Capital Accounts.

4.5. **LLC Loans.** Subject to Section 7.3, AmSurg or an Affiliate thereof may, from time to time and as it deems necessary, lend, or arrange for the LLC to borrow, additional working capital sufficient to enable the LLC to carry on its business as contemplated by Article 3 hereof.

Any loan by AmSurg or an Affiliate thereof to the LLC made for working capital purposes shall be evidenced by a promissory note which shall bear interest at a rate equal to one-half percentage point over the Prime Rate and which shall contain other terms substantially similar to those which might be agreed to with a non-affiliated lender. Any required



monthly payments (including any past due amounts) under any such loan by the LLC or any other party shall be made before any distributions of Available Cash Flow are made to the Members pursuant to Section 6.3 hereof.

4.6. **Withdrawal or Reduction of Members' Capital Contributions.** No Member shall have the right to withdraw from the LLC. A Member shall not receive out of the LLC's property all or any part of such Member's Capital Contributions except as provided in Sections 6.3 and 13.3 hereof.

4.7. **Interest and Preferential Rights.** Except with respect to any loans made pursuant to Sections 4.3, 4.4 and 4.5 hereof, no interest shall accrue on any Capital Contributions and no Member shall have any preferential rights with respect to distributions or upon dissolution of the LLC.

4.8. **Membership Interests and Amendments to Exhibit A.** Each Member shall be credited with the Membership Interest (expressed as a percentage of all Membership Interests) and initial capital account balance set forth opposite such Member's name on Exhibit A. The amounts shown on Exhibit A with respect to capital account balances and Membership Interests shall be appropriately amended to reflect changes to such amounts as a result of any changes in the membership of the LLC or assignments of Membership Interests. Exhibit A shall also be amended from time to time to reflect any changes in the addresses of Members.

## 5. EXPENSES OF THE LLC

5.1. **Organizational Expenses.** Each Member shall bear its own expenses incurred in connection with the preparation, review, and negotiation of this Agreement, the Membership Interest Purchase Agreement and any other documents contemplated hereunder.

5.2. **Operating Expenses.** The LLC will reimburse the Members for reasonable travel expenses incurred in connection with

performing their respective duties hereunder; provided that such expenses shall not exceed \$20,000 per year without the prior approval of the Board.

## 6. ALLOCATION OF INCOME AND LOSS AND DISTRIBUTIONS

6.1. **Allocation of Net Taxable Income or Loss and Tax Credits.** Except as provided in Sections 6.2 and 6.5, all income and gain of the LLC includable for federal, state and local income tax purposes, all expenses and losses of the LLC deductible for federal, state and local income tax purposes, as applicable, and all federal income tax credits shall be allocated in proportion to the Membership Percentage of each Member.

6.2. **Allocations to Reflect Contributed Property.** If a Member contributes property to the LLC which has a difference between its tax basis and its fair market value on the date of its contribution, then all items of income, gain, loss and deduction with respect to such contributed property shall be shared for federal income tax purposes among the Members pursuant to Section 704(c) of the Code so as to take into account the variation between the basis of such property and its fair market value at the time of contribution.

Any elections or other decisions relating to such allocations shall be made by the Tax Matters Member in any manner that reasonably reflects the purpose and intention of this Agreement. Except as otherwise provided in such Section 1.704-3(d) of the Treasury Regulations, the Capital Accounts of the Members shall be adjusted in accordance with Section 1.704-1(b)(2)(iv)(g) of the Treasury Regulations for allocations to the Members of income, gain, loss and deduction (including depreciation, depletion, amortization or other cost recovery) as computed for book purposes, with respect to the property contributed; and the amount of book depreciation, depletion or amortization for a period with respect to an item of contributed property shall be the amount that bears the same relationship to the book value of such property as the depreciation (or cost recovery deduction), depletion or amortization computed for tax purposes with respect to such property for such period bears to the adjusted tax basis of such property. If such property has a zero adjusted tax basis, the book depreciation,

depletion or amortization may be determined under any reasonable method selected by the Tax Matters Member.

References in this Section 6.2 to book and tax depreciation, depletion, amortization, and gain or loss with respect to property that has an adjusted tax basis that differs from its book value include, under analogous rules and principles, the unrealized income or deduction with respect to accounts receivable, accounts payable and other accrued but unpaid items.

**6.3. Distribution of Available Cash Flow.** Except as provided in Section 4.5, the LLC shall distribute Available Cash Flow. Such distributions shall be made in monthly installments within fifteen (15) days after the end of each month and shall be made to all Members pro rata in proportion to the respective Membership Percentages of the Members at the time of each distribution.

**6.4. Consequences of Distributions.** Upon the determination to distribute funds in any manner expressly provided in this Article 6, made in good faith, no Member shall incur liability on account of such distribution, even though such distribution may have resulted in the LLC retaining insufficient funds for the operation of its business, which insufficiency resulted in loss to the LLC or necessitated the borrowing of funds by the LLC.

**6.5. Distribution Upon Termination.** When the LLC is terminated, pursuant to Article 13 or otherwise, the final distribution to Members shall be according to the balance of their Book Capital Accounts, after allocation of income, gain, expense and loss in the fiscal year of termination (including the allocation for the deemed sale of assets distributed in kind required by Section 13.3).

## 7. BOARD OF DIRECTORS

**7.1. Number and Term.** The LLC shall have a Board consisting of two (2) AmSurg Directors and two (2) Owner Directors. Each Director shall hold office for a period of one (1) year or until such Director's earlier resignation, removal or death. There

shall be no limit on the number of years a Director can serve on the Board.

**7.2. Duties.** Except as otherwise specifically set forth in this Agreement, the Board shall have ultimate authority with respect to the LLC's operations, including, but not limited to, physician credentialing, granting of privileges and approval of operating policies and procedures of the Center.

**7.3. Acts Requiring Board Approval.** Without obtaining the consent of the Board, no Member or Officer shall:

7.3.1. Sell, exchange, lease or otherwise transfer all or substantially all of the assets of the LLC, or any assets of the LLC with a value in excess of \$25,000 for any single item or in excess of \$50,000 in one (1) year;

7.3.2. Dissolve, liquidate, cease operations or wind up the affairs of the LLC;

7.3.3. Merge or consolidate the LLC with or into another entity, reorganize or recapitalize the LLC, or cause the LLC to enter into a joint venture or other business combination with another entity;

7.3.4. Incur indebtedness for borrowed funds or refinancing of borrowed funds on behalf of the LLC in excess of \$25,000 or aggregate indebtedness in excess of \$50,000 in one (1) year;

7.3.5. On behalf of the LLC, enter into an agreement to make any single expenditure or lease in excess of \$25,000 or aggregate annual expenditures in excess of \$50,000;

7.3.6. Establish or change in any material respect the operating policies and procedures of the

Center, except for policies and procedures relating to corporate and regulatory compliance, employment matters and financial reporting matters of general applicability to the ambulatory surgery centers affiliated with AmSurg;

7.3.7. Hire or discharge the administrator of the Center;

7.3.8. On behalf of the LLC, enter into an agreement with an Affiliate of any Member, or terminate, extend, renew, amend or modify in any respect any such agreement;

7.3.9. Select or change the name under which the Center is operated or the location of the Center;

7.3.10. Except as permitted by Section 7.3.4, refinance any indebtedness of the LLC which the Board approved;

7.3.11. Except with respect to indebtedness not requiring Board consent under Section 7.3.4, place or allow any encumbrance to be placed on the assets of the LLC;

7.3.12. Vary or change in any material respect any portion of the professional liability coverage of the Center;

7.3.13. Request or require a Capital Contribution to be made by any Member;

7.3.14. Authorize or approve any voluntary declaration of bankruptcy, insolvency or assignment for the benefit of creditors by the LLC;

7.3.15. Authorize or approve any strategic plan or business plan for the LLC or any additions or conversions to the Center which constitute substantial changes in service (as defined by applicable law) or that

would require the filing of an application for certificate of need;

7.3.16. Enter into a settlement agreement with respect to any litigation or dispute requiring the LLC to pay, pursuant to which the LLC will receive, or pursuant to which the LLC will waive, or the waiver of, a contractual claim having a value in excess of \$25,000 (other than disputes regarding accounts receivable that arise in the ordinary course of business);

7.3.17. Enter into an agreement with a third party payor regarding the reimbursement to be received by the Center, unless any such agreement is consistent with guidelines established by the Board, if any; or

7.3.18. Amend or modify in any manner the LLC's Articles of Organization or this Agreement.

7.4. **Election.** The AmSurg Directors shall be elected by AmSurg, and the Owner Directors shall be elected by Owners holding a majority of the Membership Interests held by the Owners. Any vacancy occurring on the Board for any reason shall be filled by the Member that originally appointed such Director. A Chairman of the Board shall be elected by the Board at the first meeting of the Board held in each fiscal year.

7.5. **Quorum and Voting.** A quorum of the Board shall consist of a majority of the AmSurg Directors and a majority of the Owner Directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of the AmSurg Directors and a majority of the Owner Directors present shall be the act of the Board, unless the Articles of Organization or this Agreement requires the vote of a greater number of

Directors. Each Director shall have one vote on each matter considered by the Board.

**7.6. Regular Meetings of the Board.** Regular meetings of the Board shall be held quarterly at such places, within or without the State of Connecticut, on such dates and at such times as the Board may determine from time to time.

**7.7. Meeting by Telephone.** Any or all Directors may participate in a regular or special meeting of the Board by conference telephone or any other means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

**7.8. Action on Written Consent.** Action required or permitted to be taken at a meeting of the Board may be taken without a meeting, if the number of Directors required to approve any such action consent to the taking of such action without a meeting and approve such action by signing one or more written consents describing the action taken. The LLC shall promptly distribute copies of any such action to the Directors, but the failure of the LLC to distribute copies of such action shall not void or otherwise effect the validity of such action in any manner.

**7.9. Notice of Meetings.** The President or a majority of either the AmSurg Directors or the Owner Directors may call a special meeting of the Board of Directors by giving 48 hours' prior notice to all Directors of the date, time and place of the meeting. The notice need not state the purpose of the meeting.

## 8. MEMBERS

**8.1. Medical Malpractice Insurance.** Each Owner shall maintain at all times medical malpractice insurance complying with the Medical Staff Bylaws of the Center.

**8.2. Ownership and Investment Restrictions.** Neither any Owner nor any Affiliated Physician, nor any Affiliate of any Owner or Affiliated Physician shall:

8.2.1. have any direct or indirect ownership interest in, or manage, lease, develop or otherwise have any financial interest in any business or entity competing or planning to compete with the LLC (including, but not limited to, any ambulatory surgery center or any physician office in which surgical procedures are performed and for which facility fees, tray fees or other fees in addition to standard professional fees are charged) within a twenty-five (25) mile radius of the Center (the "Market Area"), or

8.2.2. in the case of a physician, become an employee of a hospital or an Affiliate of a hospital that is located within the Market Area, or enter into any contract or other arrangement (whether as a result of his or her employment or otherwise) that requires or incentivizes him or her to perform procedures at any hospital or facility affiliated with a hospital in the Market Area; provided, however that an Owner or Affiliated Physician may become an employee of a hospital or hospital Affiliate and may receive compensation paid by such a hospital or hospital Affiliate that does not require such Owner or Affiliated Physician to perform ambulatory surgical procedures at the employing hospital or hospital Affiliate and

which compensation is not based, in whole or in part, on ambulatory surgery referrals to or procedures performed at the employing hospital or hospital Affiliate,

in each case described in Sections 8.2.1. and 8.2.2 until the later of (i) five (5) years from the date of this Agreement, or (ii) two (2) years after such Owner (or with respect to an Affiliated Physician, the Owner with whom such Affiliated Physician is affiliated) ceases to be a Member of the LLC.

The foregoing shall not prohibit any Owner or Affiliated Physician, nor any Affiliate of an Owner or Affiliated Physician, from (i) owning shares of capital stock constituting less than 1% of the outstanding capital stock of any corporation whose common stock is traded on a national securities exchange, (ii) practicing medicine or performing surgical procedures at any facility, or (iii) receiving a reasonable fee in exchange for providing medical director or call coverage services to a tertiary hospital. The parties acknowledge and agree that this Section 8.2 does not require physician Owners or Affiliated Physicians to perform surgical procedures at the Center or to refer patients to the Center, and imposes no restrictions on where such procedures are performed or where referrals are made.

Each Owner who is a physician and each Affiliated Physician acknowledges and agrees that the enforcement of the provisions of this Section 8.2 against him or her would not prevent such person from engaging in his or her profession, or the practice of medicine.

Each Member recognizes and acknowledges that the ascertainment of damages in the event of a breach of this Section 8.2 would be difficult, and agrees that the other Members, in addition to all other remedies they may have, shall have the right to injunctive relief if there is such a breach. Notwithstanding the foregoing, in the event a physician Owner or Affiliated Physician, or any Affiliate of a physician Owner or Affiliated Physician, violates the provisions of Section 8.2.2 such physician Owner or Affiliated Physician shall pay to the LLC, as liquidated damages, an amount equal to (a) five (5) times the LLC Profit plus the LLC's interest expense for the preceding twelve (12) calendar months, minus (b) the LLC's outstanding Principal Indebtedness, with this amount multiplied by such Owner's ownership interest in the LLC (or such Owner's ownership interest in the LLC immediately prior to the termination of his or her membership in the LLC), it being acknowledged by the parties that the damages to the LLC in such event would be difficult to ascertain.

**8.3. Services Provided by Owners.** As additional consideration for his or her Membership Interests and without further charge to the LLC other than the expenses outlined in Section 5.2 hereof, Owners shall provide the Center with:

8.3.1. A Medical Director acceptable to the Board, who will perform the duties and responsibilities assigned from time to

time by the Board, including, but not limited to:

8.3.1.1 Assisting in the selection of suitable treatment modalities for all patients of the Center;

8.3.1.2 Devising clinical procedures which, when implemented by the Center, will assure adequate monitoring of patients and the treatment process;

8.3.1.3 Directing, coordinating and reporting to the Board on all medical aspects of the Center's operations;

8.3.1.4 Devising procedures which, when implemented by the Center, will assure (i) adequate training of nurses and other staff in appropriate treatment techniques, and (ii) the supervision of all non-physician staff at the Center;

8.3.1.5 Devising clinical procedures which, when implemented by the Center, will assure the availability of a patient care policy and procedures manual and other written materials that reflect current professional standards and assisting in the periodic review and revision thereof;

8.3.1.6 Developing and maintaining professional memberships and active visibility in the local community through the provision of consulting, educational and related services in a manner consistent with the role of

Medical Director which promotes the positive visibility of the Center in the community;

8.3.1.7 Devising the medical policy statements of the Center, presenting the statements for the approval of the Board and upon securing Board approval, implementing and monitoring the policies;

8.3.1.8 Assisting the LLC in attracting qualified physicians to the medical staff of the Center and recommending to the Board that qualified physicians be granted clinical privileges at the Center;

8.3.1.9 Assisting the LLC in attracting qualified non-physician staff to work at the Center and assessing, in conjunction with other members of the medical staff, the performance of non-physician staff;

8.3.1.10 Using best efforts to assist the Board in assuring that the Center complies with all state and federal statutes, all standards of applicable accreditation bodies, and regulations and agency directives concerning the medical standards of patient care required at the Center, and reporting to the Board any known deficiencies therein;

8.3.1.11 Accepting appropriate and reasonable medical staff duties and assignments at the

Center including (i) acting as the liaison between the medical staff and the Board, (ii) appointing physicians to serve as members and chairmen of medical staff committees, and (iii) serving on all committees of the Center; and

8.3.1.12 Participating in long and short range planning for the Center, reviewing the Center's operating budget, and, where appropriate, making recommendations on the budget.

8.3.2. A Performance Improvement Chairman acceptable to the Board, who will perform the duties and responsibilities assigned from time to time by the Board or its designee, including, but not limited to:

8.3.2.1 Overseeing the performance improvement program and all corresponding activities of the Center;

8.3.2.2 Assisting in the development and revision of indicators necessary to adequately evaluate care provided by the Center and that meet or exceed governmental requirements;

8.3.2.3 Directing the review of data summaries of all identified indicators, as well as information from other sources regarding the quality of care provided by the Center;

8.3.2.4 Directing the development of educational programs based on the needs

identified through committee activities and supporting department-wide education on continuous process improvement principles;

8.3.2.5 Overseeing the credentialing and recredentialing process for the Center's medical staff;

8.3.2.6 Overseeing and administering the risk management program for the Center;

8.3.2.7 Overseeing and administering medical malpractice issues related to the Center;

8.3.2.8 Working with the Center's performance improvement committee and conducting quarterly performance improvement committee meetings; and

8.3.2.9 Reviewing the Center's performance improvement program on at least an annual basis.

8.4. **Member Representations.** Each Owner hereby represents that he or she maintains a current license to practice medicine in the State of Connecticut and has no knowledge of any circumstances or conditions that could have a material adverse impact on the operations of the Center or the medical practices of Owners (other than conditions which might have a material adverse effect on the health care industry in general). Each Member hereby represents that he, she or it, has not been excluded from participation in the Medicare program or any other governmental health care program for any reason and has not been convicted of any crime in violation of

any state or Federal law related to health care matters.

8.5. **Meetings.** Meetings of the Members, for any purpose or purposes, may be called by the President, the Board, AmSurg, Members holding a majority of AmSurg's Membership Interests, or Members holding a majority of the Owners' Membership Interests, by giving 48 hours' prior notice to all Members of the date, time and place of the meeting. The notice need not state the purpose of the meeting.

8.6. **Action by Members Without a Meeting; Telephone Meetings.** Action required or permitted to be taken at a meeting of the Members may be taken without a meeting, if the number of Members required to approve any such action consent to the taking of such action without a meeting and approve such action by signing one or more written consents describing the action taken. The LLC shall promptly distribute copies of any such action to the Members, but the failure of the LLC to distribute copies of such action shall not void or otherwise affect the validity of such action in any manner. A meeting also may take place by telephone conference call or any other form of electronic communication through which the Members may simultaneously hear each other. A Member participating in a meeting by this means is deemed to be present in person at the meeting.

8.7. **Record Date.** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such

determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 8.7, such determination shall apply to any adjournment thereof.

8.8. **Quorum.** Members holding a majority of the AmSurg Membership Interests and a majority of the Owners' Membership Interests, represented in person, shall together constitute a quorum at any meeting of Members.

8.9. **Required Vote; Manner of Acting.** Except as otherwise provided in Section 8.7 above, if a quorum is present, the affirmative vote of the holders of a majority of the AmSurg Membership Interests and a majority of the Owners' Membership Interests present and entitled to vote on that item of business shall be the act of the Members.

8.10. **Confidentiality.** Each Member and each shareholder of AmSurg and Owners (the "Recipient Members") shall maintain the confidentiality of all documents and information provided by the other Members and their Affiliates (the "Disclosing Members") in connection with the formation of, and the business to be conducted by, the LLC, including, but not limited to, pro forma financial information, outcome studies, information concerning the Disclosing Members and their business strategy and any documents to be utilized in connection with the ownership and operation of the Center (the "Information"). The Recipient Members will not discuss or disclose any of the Information to any third party or take any action that could compromise the confidentiality of the Information to any third party without the prior written consent of the Disclosing Members. The Recipient Members shall, upon termination of their membership in the LLC, promptly return to the Disclosing

Members all Information in such person's possession, including without limitation all policy, procedure and program manuals and related documents, and such person shall not make or retain any copies thereof. By their execution of this Agreement, each Recipient Member acknowledges that the Information is proprietary and contains specialized knowledge and data that constitutes valuable intellectual property.

8.11. **Triggering Events.**

8.11.1. Each of the following events shall be deemed a "Triggering Event" for purposes of this Section 8.11 with respect to any Owner (and such Owner shall hereinafter be referred to as "Terminating Owner"):

8.11.1.1 the death of such Terminating Owner or the Affiliated Physician of such Terminating Owner;

8.11.1.2 such Terminating Owner or the Affiliated Physician of such Terminating Owner (A) becomes eligible for full benefits under a long-term disability policy, or (B) the Board determines in good faith that such Terminating Owner or the Affiliated Physician of such Terminating Owner has been unable, due to physical or mental illness or incapacity, to perform the duties of his medical practice consistent with past practice with reasonable accommodation for a continuous period of sixty (60) days or an aggregate of ninety (90) days during any consecutive 12-month period;



8.11.1.3 the cessation of the practice of medicine by such Terminating Owner or the Affiliated Physician of such Terminating Owner on a full-time basis;

8.11.1.4 the relocation of the practice of such Terminating Owner or the Affiliated Physician of such Terminating Owner outside of the Market Area;

8.11.1.5 such Terminating Owner or the Affiliated Physician of such Terminating Owner no longer maintaining a current license to practice medicine in the State of Connecticut (the foregoing not being applicable to a temporary suspension of a license to practice in Connecticut for a period of less than ninety (90) days);

8.11.1.6 such Terminating Owner or the Affiliated Physician of such Terminating Owner is involved in a divorce proceeding or matrimonial dissolution that becomes final and in which a transfer of any of such Terminating Owner's Membership Interest is ordered, in which case this subsection shall be applied solely to the ex-spouse of the Terminating Owner or the Affiliated Physician of such Terminating Owner; provided, however, that in the event the LLC exercises its right to purchase any of the Terminating Owner's

Membership Interest pursuant to this subsection, the Terminating Owner or the Affiliated Physician of such Terminating Owner shall have an option to repurchase such membership interest for the same purchase price paid by the LLC in accordance with Section 8.11.2;

8.11.1.7 a Terminating Owner (A) makes an assignment for the benefit of creditors or admits in writing his inability to pay debts generally as they become due, (B) applies to any tribunal for the appointment of a trustee or receiver of any substantial part of his assets, (C) commences any voluntary proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or other liquidation laws of any jurisdiction, (D) becomes the subject of any involuntary proceedings and such Terminating Owner indicates his approval, consent or acquiescence, or (E) becomes the subject of an order appointing a trustee or receiver, adjudicating him bankrupt or insolvent, or approving a petition in any involuntary proceeding, and such order remains in effect for ninety (90) days;

8.11.1.8 the exclusion of such Terminating Owner or the Affiliated Physician of such Terminating Owner by the Centers for Medicare &

Medicaid Services or the state Medicaid agency from participation in the Medicare or Medicaid program for any reason;

8.11.1.9 the conviction of such Terminating Owner or the Affiliated Physician of such Terminating Owner of a felony in violation of any state or federal law related to healthcare matters;

8.11.1.10 the violation of the provisions of Section 8.2 by such Terminating Owner or the Affiliated Physician of such Terminating Owner; and

8.11.1.11 the determination by AmSurg and the Owners holding a majority of the Membership Interests held by all Owners (other than the Terminating Owner) that the Terminating Owner's Membership Interest shall be repurchased by the LLC.

8.11.2. In the event of a Triggering Event, the remaining Owners shall have the obligation to repurchase a portion of such Terminating Owner's Membership Interest equal to the Terminating Owner's Membership Interest multiplied by (i) (a) 100%, with respect to an individual Terminating Owner or (b) the percentage beneficial ownership of the Affiliated Physician or his or her Immediate Family Member in the Terminating Owner, with respect to a Terminating Owner who is not an individual (the "Subject Interest"). The Owners shall purchase the Subject Interest proportionately, based on a fraction, the numerator of which shall be the percentage

Membership Interest held by each remaining Owner and the denominator of which shall be the aggregate percentage Membership Interests held by all remaining Owners. The aggregate purchase price for the Subject Interest pursuant to this Section 8.11.2 shall be payable in cash and determined as follows:

8.11.2.1 If the Triggering Event is one described in Sections 8.11.1.1 through 8.11.1.7 and Section 8.11.1.11, an amount equal to (i) three (3) times the LLC Profit for the twelve (12) calendar months immediately following the Triggering Event Date plus the LLC's interest expense for the twelve (12) calendar months immediately preceding the Triggering Event Date, minus (ii) the LLC's outstanding Principal Indebtedness as of the Triggering Event Date, with this amount multiplied by the selling Terminating Owner's pro rata percentage ownership interest in the LLC.

8.11.2.2 If the Triggering Event is one described in Sections 8.11.1.8 and 8.11.1.9, the purchase price shall be equal to 50% of the amount determined in accordance with Section 8.11.2.1.

8.11.2.3 If the Triggering Event is described in Section 8.11.1.10, the purchase price shall be One Dollar (\$1.00).

In the event the purchase of the Subject Interest is from a Terminating Owner who is not an individual, such purchase price shall be paid by the Terminating Owner to the Affiliated Physician or his or her Immediate Family Member in redemption of his or her full beneficial ownership interest in the Terminating Owner.

8.11.3. The Terminating Owner shall give the LLC and the other Owners prompt written notice of the occurrence of a Triggering Event, and such Terminating Owner's Membership Interest shall terminate as of the date of the Triggering Event. The purchase price for the Terminating Owner's Membership Interest as described in Section 8.11.2 shall be paid in a lump sum in cash to the Terminating Owner within sixty (60) days following the first anniversary of the Triggering Date.

8.11.4. In the event one or more of the Owners breaches the provisions of this Section 8.11 and fails to purchase his, her or its pro rata portion of the Subject Interest, the remaining Owners or, at the direction of AmSurg, the LLC shall have the right, but not the obligation, to purchase the portion of the Subject Interest not purchased by the breaching Owner[s].

8.11.5. By each Owner's execution of this Agreement, each Owner acknowledges and agrees that the LLC may purchase a Terminating Owner's ownership interest in LLC pursuant to Section 8.11.2 and may subsequently thereafter transfer such ownership interest to another physician in the Market Area, provided, however that such physician shall be reasonably acceptable to the Members. Any such physician shall be treated as an

Owner on the same terms as the other Owners.

8.12. **Fiduciary Duty.** Each Owner and Affiliated Physician and each Affiliate of an Owner or Affiliated Physician shall have a fiduciary duty to act at all times in a manner such Person reasonably believes to be in the best interest of the LLC, in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

## 9. OFFICERS

9.1. **Appointment of Officers.** The Board shall appoint a President and may appoint one or more Vice Presidents, a Treasurer, a Secretary and such other officers as the Board shall elect from time to time, all of whom will be Affiliates of AmSurg, to serve as the officers of the LLC.

9.2. **Term.** The Officers shall serve for an indefinite term until removed and replaced by the Board.

9.3. **President.**

9.3.1. **General.** Subject to the provisions of this Agreement, the management of the business affairs of the LLC shall rest with the President, who shall have all the authority which may be possessed by a president pursuant to the Act, and such additional authority as otherwise conferred by law or is necessary or advisable in the discharge of the duties of the President under this Agreement. The President shall perform his or her duties to the best of his or her ability and shall use his or her best efforts to carry out the business of the LLC.

9.3.2. **Powers.** Subject to the provisions of Section 7.3 and those powers reserved to the Members and the Board by this Agreement or the

Articles of Organization, the President may, on behalf of and at the cost, expense and risk of the LLC and in accordance with the operating and capital budgets of the LLC:

9.3.2.1 On behalf of the LLC, spend the capital and net income of the LLC in the exercise of any rights or powers possessed by the President hereunder;

9.3.2.2 Make capital expenditures on behalf of the LLC;

9.3.2.3 Cause the LLC to lease, acquire, own, manage and operate the Center, and enter into agreements containing such terms, provisions and conditions as the President may deem advisable;

9.3.2.4 Cause the LLC to lease, acquire, own and operate any equipment, fixtures, supplies or other items necessary for the operation of the Center;

9.3.2.5 On behalf of and for the benefit of the LLC, enter into any contracts or arrangements necessary for the conduct of the business of the LLC;

9.3.2.6 Purchase from or through others contracts of liability, casualty and other insurance which the President deems advisable for the protection of the LLC or for any purpose convenient or beneficial to the LLC;

9.3.2.7 On behalf of and for the benefit of the LLC, incur indebtedness;

9.3.2.8 Sell or otherwise dispose of, upon such terms and conditions as the President may deem advisable, appropriate or convenient, any of the assets of the LLC that do not constitute all or substantially all of the LLC's assets;

9.3.2.9 Establish bank accounts in the name and on behalf of the LLC and designate the signatories thereon;

9.3.2.10 Invest in short-term debt obligations of federal and state governments and their agencies, commercial paper and certificates of deposit of commercial banks, savings bank or savings and loan associations and "money market" mutual funds, such funds as are temporarily not required for the purposes of the LLC's operations; and

9.3.2.11 Delegate all or any of his/her duties hereunder and, in furtherance of any such delegation, appoint, employ or contract with any person (including Affiliates of the Members) for the transaction of the business of the LLC, which persons may, under the supervision of the President, act as consultants, accountants, attorneys, brokers, escrow agents, or in any other capacity deemed by the President necessary or desirable, and pay

appropriate fees to any of such persons. Without limiting the foregoing, AmSurg may delegate to AmSurg Corp. the authority to negotiate and execute agreements with payors on behalf of the LLC.

9.4. **Duties.** AmSurg shall provide management services (the "Management Services") to the LLC. AmSurg, through the President, shall consult in and oversee the administrative operations of the Center and, subject to the terms of this Agreement and the general direction and control of the Board, coordinate all business and administrative activities pertaining to the Center, including, but not in any way limited to, the following:

9.4.1. Assist the Center in operating in an efficient and business like manner;

9.4.2. Coordinate the purchase or lease of equipment, supplies and pharmaceuticals (including purchases through national purchasing programs) necessary for the operation of the Center;

9.4.3. Coordinate all reasonable and necessary actions to maintain all licenses, permits and certificates required for the operation of the Center, and to ensure that all appropriate certification and accreditation available for the Center's operations are obtained;

9.4.4. Coordinate, with the support of the Medical Director and the Board, ongoing marketing programs to increase community and payor awareness of the Center;

9.4.5. Negotiate the amount and method of reimbursement that the Center will receive from all

appropriate third party payors, both public and private;

9.4.6. Establish, maintain, revise and administer, with the support and approval of the Board, the overall charge structure of the Center and arrange for payment of such charges by others, when appropriate;

9.4.7. Arrange and negotiate financing for equipment and future capital needs of the Center;

9.4.8. Develop and revise, subject to approval by the Board, all necessary policies and operating procedures pertaining to each aspect of the Center's operations (except for policies and procedures relating to corporate and regulatory compliance, employment matters and financial reporting matters that are applicable to all AmSurg Affiliates, including the LLC, which shall be approved by AmSurg and shall not be subject to Board approval);

9.4.9. Recruit, hire, supervise, discipline and discharge, in conjunction with the Medical Director, all persons working in the Center and providing direct patient care, as needed, and recruit new physician Owners;

9.4.10. Train Center personnel with respect to all aspects of the Center's operations, including but not limited to administrative, clinical, financial and marketing matters;

9.4.11. Arrange for the purchase by the LLC of necessary insurance coverage for the Center;

9.4.12. Establish and administer accounting procedures and controls and systems for the development, preparation and keeping of records

and books of accounting related to the business and financial affairs of the Center;

9.4.13. Oversee the preparation of the annual report and tax information returns required to be filed by the LLC, and deliver a copy of same to the Members in a timely manner as needed;

9.4.14. Furnish the LLC in a timely fashion monthly operating reports and other reports reasonably requested by the Board or any Director;

9.4.15. Prepare for Board review all capital and annual operating budgets as needed; and

9.4.16. Perform all duties herein required of it in good faith and with reasonable diligence so as to maximize the Center's ability to efficiently provide appropriate quality health care to patients.

9.5. **Compensation for Management Services.** For all Management Services rendered by AmSurg under this Agreement, the LLC shall pay AmSurg a fee equal to ten percent (10%) of Net Profit of the LLC (as defined below), to be paid monthly in arrears; provided, however, such fee shall be subject to a minimum yearly payment to AmSurg by the LLC of \$150,000 and a maximum yearly payment by the LLC to AmSurg of \$300,000. Payment will be made on or before the 10<sup>th</sup> day of each month.

For purposes of this Agreement, "Net Profit" is means the revenue of the LLC less all expenses (other than the management fee described in this Section 9.5) of the LLC (determined in accordance with generally accepted accounting principles consistently applied).

9.6. **Right to Rely Upon the Authority of the President.** No person dealing with the President shall be required to determine the President's authority to make any commitment or undertaking on behalf of the LLC, nor to determine any fact or circumstance bearing upon the existence of its authority. In addition, no purchaser of any property of the LLC shall be required to determine the sole and exclusive authority of the President to sign and deliver on behalf of the LLC any instrument of transfer, or to see to the application or distribution of revenues or proceeds paid or credited in connection therewith, unless such purchasers shall have received written notice from the LLC affecting the same.

9.7. **Vice President.** The Vice President or Vice Presidents (if any) shall assist the President in the management of the LLC, and shall perform such other duties as the Board may from time to time prescribe.

9.8. **Secretary.** The Secretary shall be responsible for recording the minutes of all Board and Member meetings. The Secretary shall have the responsibility of authenticating records of the LLC and receiving notices required to be sent to the Secretary and shall perform such other duties as the Board may from time to time prescribe.

9.9. **Treasurer.** The Treasurer shall have custody of the LLC's funds and securities, shall keep or cause to be kept full and accurate account of receipts and disbursements in books of the LLC, shall disburse or cause to be disbursed the funds of the LLC as required in the ordinary course of business, and shall perform such other duties as may be incident to his or her office or as prescribed by the Board.

9.10. **Limitation on Liability.** An Officer shall not be liable for any action taken as an Officer, or any failure to take action as an Officer, except to the extent that such

Officer's conduct failed to comply with the standards set forth in Section 48-249-115 of the Act.

9.11. **Resignation.** Any Officer of the LLC may resign at any time by giving written notice to the Members. The resignation of any Officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.12. **Compensation and Reimbursement.** No Officer shall have any right to compensation for services performed on behalf of the LLC except as determined from time to time by the Board. Notwithstanding the foregoing, an Officer shall have the right to be reimbursed by the LLC for any reasonable out-of-pocket expenses incurred by such Officer in connection with any services performed by such Officer on behalf of the LLC.

9.13. **No Exclusive Duty.** Each Officer may have other business interests and may engage in other activities in addition to those relating to the LLC. Neither the LLC nor any Member shall have the right to share or participate in such other investments or activities of such Officer based on such Officer's status as an Officer of the LLC. No Officer shall incur any liability to any Member or the LLC as a result of engaging in any other business or venture.

## 10. INDEMNIFICATION

10.1. **Authority to Indemnify.** The LLC shall indemnify, and upon request shall advance reasonable expenses to, an individual made a party to a proceeding because such individual is or was a Responsible Person, to the full extent permitted by law, against liability incurred in the proceeding if the Responsible Person satisfies the following standard of conduct:

10.1.1. The Responsible Person's conduct was in good faith and the Responsible Person reasonably believed (a) in the case of conduct in the Responsible Person's official capacity with the LLC, that his or her conduct was in the best interest of the LLC and (b) in all other cases, that his or her conduct was at least not opposed to the LLC's best interest; and

10.1.2. In the case of any criminal proceeding, the Responsible Person had no reasonable cause to believe his or her conduct was unlawful.

10.2. **Limitations on Authority to Indemnify.** Except as required by applicable law, the LLC may not indemnify a Responsible Person (a) in connection with a proceeding by or in the right of the LLC in which the Responsible Person was adjudged liable to the LLC, and (b) in connection with any other proceeding charging improper personal benefit to such Responsible Person, whether or not involving action in the Responsible Person's official capacity, in which the Responsible Person was adjudged liable on the basis that personal benefit was improperly received by such Responsible Person.

The indemnification and advancement of expenses granted pursuant to this Article 10 shall not be deemed exclusive of any other rights to which a Responsible Person seeking indemnification or advancement of expenses may be entitled, whether contained in this Article 10, the Articles of Organization, the Act, a resolution of the Board, or an agreement providing for such indemnification; provided, however, that no indemnification may be made to or on behalf of any Responsible Person if a judgment or other final adjudication adverse to the Responsible Person establishes his or her liability:

10.2.1. For any breach of duty of loyalty to the LLC or its Members;

10.2.2. For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

10.2.3. For any liability for unlawful distributions incurred under Section 48-249-307 of the Act.

10.3. **Advances for Expenses.** To the full extent permitted by law, the indemnification and advances provided for herein shall include reasonable expenses (including attorneys' fees), judgments, fines and amounts paid in settlement. If the LLC advances expenses to a Responsible Person pursuant to this Article 10 and it is subsequently determined that the Responsible Person is not entitled to indemnification, the Responsible Person will repay such advances within fifteen (15) days of such determination.

10.4. **Indemnification of Officers, Employees and Agents.** An Officer, employee, independent contractor or Agent of the LLC who is not a Responsible Person is entitled to indemnification and advancement of expenses to the same extent as a Responsible Person. The LLC shall also indemnify and advance expenses to an Officer, employee, independent contractor or Agent who is not a Responsible Person to the extent required, consistent with public policy, by specific action of the Board or by contract.

## 11. FISCAL MATTERS

11.1. **Books and Records.** The LLC's books and records (including a current list of the names and addresses of all Members) and an executed copy of this Agreement, as currently in effect, shall be maintained at the principal executive office of the LLC, and each Member shall have access thereto at all reasonable times.

11.2. **Fiscal Year.** The fiscal year of the LLC shall be the calendar year.

11.3. **Tax Status; Elections.** Notwithstanding any provision hereof to the contrary, solely for purposes of the federal

income tax laws, each of the Members hereby recognizes that the LLC will be subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of a U.S. Partnership Return of Income shall not be construed to extend the purposes of the LLC or expand the obligations or liabilities of the Members. Upon the transfer of an interest in the LLC or in the event of a distribution of the LLC's property, the Tax Matters Member may, but is not required to, elect pursuant to Section 754 of the Code to adjust the basis of the LLC's property as allowed by Sections 734(b) and 743(b) thereof.

11.4. **Reports to Members.** As soon as reasonably practicable after the end of each fiscal year, but not later than ninety (90) days after the end of each fiscal year, the LLC shall make available to each Member an unaudited balance sheet of the LLC at the end of the previous fiscal year and unaudited statements of income or loss of the LLC for such year. In addition, the LLC will make available to each Member unaudited monthly financial and operating reports, including monthly financial highlights for the Center, an unaudited balance sheet, income statement, and statement of cash flows for the previous month, an accounts receivable analysis as of the end of the prior month, and trend reports for the trailing twelve months.

All such financial statements shall be prepared on an accrual basis of accounting in accordance with generally accepted accounting principles consistently applied. The LLC shall also furnish to each Member not later than ninety (90) days after the end of each fiscal year whatever information may be necessary for Members to file their federal income tax returns. The LLC will also make available to each Member upon request a copy or summary of all state and/or local tax returns which are filed by the LLC.

11.5. **Banking.** All funds of the LLC shall be initially deposited in a separate bank account or accounts or in an account or accounts of a savings and loan association as shall be determined by the Board, but such



funds may be invested as provided in Section 9.3.2.10 hereof.

11.6. **Tax Matters Member.** AmSurg shall be the Tax Matters Member within the meaning of the Code.

**12. ASSIGNMENT AND TERMINATION OF MEMBERSHIP INTERESTS AND ADMISSION OF NEW MEMBERS**

12.1. **Assignment of Membership Interests.** No assignment of all or any part of a Membership Interest in the LLC (including any Financial Rights, Governance Rights or other rights pertaining to a Membership Interest) shall be made except as follows:

12.1.1. Subject to the provisions of Section 12.2 hereof, a Member may assign all or any part of such Member's Membership Interest to another Member, without the consent of any Member other than the assignee;

12.1.2. Subject to the provisions of Section 12.3 hereof, an Owner may assign such Owner's Membership Interest to any person who is not a Member;

12.1.3. Except as otherwise provided herein, Member may not assign all or any part of such Member's Financial Rights in the LLC except pursuant to a simultaneous assignment of the Governance Rights and other rights pertaining to the entire Membership Interest to which such Financial Rights relate pursuant to this Article 12;

12.1.4. Except as otherwise provided herein, Governance Rights may not be assigned to another person except pursuant to a simultaneous

assignment of the Financial Rights and other rights pertaining to the entire Membership Interest to which such Governance Rights relate pursuant to this Article 12;

12.1.5. AmSurg may assign all or any part of its Membership Interest to an Affiliate of AmSurg, to another Member, or to a physician that meets the credentialing requirements of the Center without the consent of any Member; provided that in each case (i) AmSurg and the assignee give written notice of such transfer, assignment or sale to the LLC, (ii) such transfer, sale or assignment is in compliance with the Securities Act (as hereinafter defined), and all applicable state securities laws, and, if requested by the Board, the assignee has delivered an opinion of counsel to the LLC, in form and substance reasonably satisfactory to the LLC, to the effect that such transfer is either exempt from the requirements of the Securities Act and the applicable securities laws of any state or that such registration requirements have been complied with, (iii) the assignee executes a joinder to this Operating Agreement and agrees in writing to be bound by the terms hereof, and (iv) such physician shall be reasonably acceptable to the Members.. Upon the satisfaction of the conditions set forth in the preceding sentence and the making of the assignment, the LLC will cause Exhibit A hereto to be amended in accordance with Section 12.9 hereof and the assignee will become a Member holding the Membership Interest so assigned; and

12.1.6. An Owner may assign all or any part of its Membership Interest

to a trust or family limited partnership created for the benefit of any of the Owner or his or her Immediate Family Members, and all or any part of such Membership Interest so assigned may subsequently be re-transferred to such Owner without the consent of any Member, provided that in each case (i) the Owner and the assignee/assignor give written notice of such transfer, assignment or sale to the LLC (ii) such transfer, sale or assignment is in compliance with the Securities Act (as hereinafter defined), and all applicable state securities laws, and, if requested by the Board, the assignee has delivered an opinion of counsel to the LLC, in form and substance reasonably satisfactory to the LLC, to the effect that such transfer is either exempt from the requirements of the Securities Act and the applicable securities laws of any state or that such registration requirements have been complied with, and (iii) the assignee executes a joinder to this Operating Agreement and agrees in writing to be bound by the terms hereof. Upon the satisfaction of the conditions set forth in the preceding sentence and the making of the assignment, the LLC will cause Exhibit A hereto to be amended in accordance with Section 12.9 hereof and the assignee will become a Member holding the Membership Interest so assigned. In the event of a transfer of a Membership Interest by an Owner to a trust or family limited partnership as provided in this Section 12.1.6, the Affiliated Physician of such trust or family limited partnership shall retain all

voting and governance rights of an Owner set forth in this Agreement.

12.1.7. The LLC need not recognize any assignment of all or any part of a Membership Interest other than an assignment described in Sections 12.1.1 through 12.1.6 hereof. Any other assignment or attempted assignment shall be void. No assignment shall be effective until written notice thereof has been provided to the LLC and any other applicable requirements set forth in this Agreement or the Articles of Organization have been satisfied.

**12.2. Assignment of Membership Interest to Another Member.** A Member may assign all or any portion of such Member's Membership Interest to another Member if: (a) the assignee accepts such assignment, (b) the assignor and the assignee give written notice of such assignment to the LLC, and (c) the assignment is approved by the Board. Upon satisfaction of the conditions specified in the foregoing sentence, the LLC will cause Exhibit A hereto to be amended to the extent required by Section 12.9 hereof and the assignee will become the holder of the Membership Interest so assigned.

**12.3. Assignment of Membership Interest with Consent of Other Members.** If an Owner (the "Transferor") desires to transfer, assign or sell all or any portion of his or her Membership Interest (the "Offered Interests") to a physician that meets the credentialing requirements of the Center (the "Transferee"), the Transferor shall obtain from the Transferee a bona fide written offer to purchase the Offered Interests, stating the terms and conditions upon which the purchase is to be made and the consideration offered therefor (the "Offer"). The Transferor shall give notice to the LLC and the remaining Member(s) of his or her

intention to sell, furnishing a copy of the entire Offer (the "Notice"). In such event:

12.3.1. Within thirty (30) days of the receipt of Notice (the "Owner Option Period"), each Owner other than the Transferor may exercise an option to purchase the Offered Interests upon the same terms and conditions and for the same consideration stated in the Offer, on a basis pro rata to their Membership Percentage (or on a basis pro rata to the interest of those Owners exercising this option to purchase.) The Owners shall exercise such options by giving written notice both to the Transferor and each other Member within the Owner Option Period. Should an Owner fail to give written notice within the Owner Option Period, the Owner shall be deemed to have waived such option.

12.3.2. In the event any Owner shall not have exercised his or her option to purchase the Offered Interests, each Owner who exercises in full its option pursuant to Section 12.3.1 above may, within ten (10) days after the expiration of the Owner Option Period (the "Over-Allotment Period"), exercise an option to purchase the remaining Offered Interests upon the terms and conditions and for the same consideration stated in the Offer. In the case of a single Owner, his or her option shall be to purchase all of the remaining Offered Interests. In the case of two or more other Owners, each such other Owner's option shall be to purchase the amount all such other Owners may determine by agreement among themselves, or if they cannot agree, by one or more successive allocations in the proportion that the Membership Interest owned by each of the

eligible other Owners bears to the total Membership Interests owned by all such eligible other Owners. Such other Owners shall exercise such options by giving written notice both to the Transferor and each other Member within the Over-Allotment Period. Should an Owner fail to give written notice within the Over-Allotment Period, the Owner shall be deemed to have waived such option.

12.3.3. If the Owners do not exercise their options to purchase all of the Offered Interests, the LLC, within thirty (30) days beginning on the earlier of the expiration of the Over-Allotment Period or the date the LLC receives written notice from each Owner other than the Transferor waiving their options (the "LLC Option Period"), the LLC may exercise an option to purchase the remaining Offered Interests proposed to be sold by the Transferor, upon the terms and conditions and for the same consideration stated in the Offer. The LLC, at the direction of AmSurg, shall exercise such option by giving written notice both to the Transferor and each other Member within the LLC Option Period. Should the LLC fail to give written notice within such LLC Option Period, the LLC shall be deemed to have waived such option.

12.3.4. Notwithstanding anything contained herein to the contrary, the rights under this Section 12.3.1 may be waived with respect to any proposed transfer or assignment by an Owner and the LLC provided that such transfer or assignment is approved by the Board and the Members elect to waive their rights under this Section 12.3.

12.3.5. If the right of first refusal options set forth above are forfeited or waived, then within ten (10) days after the expiration of the last option period granted above, the Transferor may transfer the Offered Interests to the Transferee named in the Notice upon the terms specified therein, provided (i) such Transferor has provided the Notice set forth in this Section 12.3, (ii) such transfer, sale or assignment is in compliance with the Securities Act of 1933, as amended (the "Securities Act"), and all applicable state securities laws, and, if requested by the Board, such Transferor has delivered an opinion of such Transferor's counsel to the LLC, in form and substance reasonably satisfactory to the LLC, to the effect that such transfer is either exempt from the requirements of the Securities Act and the applicable securities laws of any state or that such registration requirements have been complied with, (iii) the Board approves such transfer, sale or assignment, (iv) the proposed transfer, assignment or sale is made in compliance with this Section 12.3, and (v) the Transferee executes a joinder to this Operating Agreement and agrees in writing to be bound by the terms hereof. Upon the satisfaction of the conditions set forth in the preceding sentence and the making of the assignment, the LLC will cause Exhibit A hereto to be amended in accordance with Section 12.9 hereof and the assignee will become a Member holding the Membership Interest so assigned.

12.4. **Termination of a Membership Interest.** Notwithstanding any provisions to the contrary contained in the Act, a Member's Membership Interest shall be

terminated only on the application of the LLC or another Member as described in Section 48-249-503(a)(6) of the Act. In the event a Member's Membership interest is terminated:

12.4.1. If the business and existence of the LLC are not continued, the Member whose Membership Interest is terminated is entitled to receive the Member's distribution pursuant to Article 13; and

12.4.2. If the business and existence of the LLC are continued, the Member whose Membership Interest is terminated is entitled to receive the lesser of:

12.4.2.1 The value of the Member's Membership Interest on a going concern basis as determined by the LLC within 90 days of the termination date, or

12.4.2.2 The value of the Member's Membership Interest on a liquidation basis as determined by the LLC within 90 days of the termination date.

If a Member's Membership Interest is terminated in contravention of this Agreement or the Articles of Organization, the Member forfeits its Governance Rights and shall be liable to the other Members for damages incurred by the other Members and the LLC as a result of the wrongful termination. Such damages may be offset against any amount to be paid to the terminating Member. Any payment to a terminating Member shall be paid to the terminating Member within six (6) months of the determination of the amount of the payment.

12.5. **Restrictions on Assignment.** No Member shall be permitted to assign such Member's Membership Interest, Financial Rights or Governance Rights if such assignment would result in the LLC being taxed for federal income tax purposes as an association taxable as a corporation or would constitute a violation of any applicable federal or state law. Each of the Members hereby agrees and acknowledges that the restrictions on assignment contained in this Article 12 are not unreasonable in view of the nature of the parties and their relationships to one another and the nature of the business of the LLC.

12.6. **Rights and Obligations of Former Members.** A Member who assigns all of the Governance Rights of such Member or whose Membership Interest is otherwise terminated shall cease to be a Member; provided, however, that such former Member or any Successor shall remain liable to the LLC for any obligations of such Member for unlawful distributions under Section 48-249-307 of the Act.

12.7. **Admission of New Members.** The admission of a new Member pursuant to the issuance of a new Membership Interest which is not acquired pursuant to any assignment by or from any existing or former Member (a "New Member") must be approved by the Board. The New Member shall receive the total amount of the Membership Interest to be received by the New Member, as determined by the Board (the "New Member Interest"). For all periods beginning on and after the one year anniversary of the date of this Agreement:

12.7.1. If AmSurg's Membership Percentage, at the time any New Member is to be admitted, is greater than 51%, then each of AmSurg and the Owners, collectively, shall transfer to such New Member 50% of the Membership Interest to be

acquired by such New Member, with each individual Owner transferring its or his pro rata share of such 50% on the basis of its or his then-current Membership Interest as a percentage of the Membership Interests held by all Owners, until AmSurg's Membership Percentage is reduced to 51%; provided, however, that in no event will AmSurg be required to transfer any portion of its Membership Interest to the New Member that would result in AmSurg's Membership Percentage following any such transfer falling below 51%. In the event that the Membership Interest to be transferred by AmSurg is so limited to prevent AmSurg's Membership Percentage from falling below 51%, each Owner shall transfer to the New Member his or her pro rata share, on the basis of such Owner's then-current Membership Interest as a percentage of the Membership Interests held by all Owners, of the Membership Interest that would have otherwise been transferred to the New Member by AmSurg.

12.7.2. If AmSurg's Membership Percentage, at the time any New Member is to be admitted is equal to 51%, then each Owner shall transfer to the New Member his or her pro rata share, on the basis of such Owner's then-current Membership Interest as a percentage of the Membership Interests held by all Owners, of the New Member Interest.

12.7.3. All proceeds corresponding to the transfer of any Membership Interest to a New Member pursuant to this Section 12.7 shall belong exclusively to the party transferring such Membership Interest, and, for

the avoidance of doubt, neither the LLC nor any other Member shall have any right to such proceeds.

Notwithstanding anything contained herein to the contrary, the Members acknowledge and agree that it is the Members' intention that AmSurg will always own a 51% or greater Membership Interest in the LLC.

**12.8. Government Regulation.** If a Fundamental Regulatory Change should occur, AmSurg or its Affiliates or assigns may, at their option, purchase some or all of the Membership Interests of Owners for a purchase price equal to (a) three (3) times the LLC Profit plus the LLC's interest expense for the preceding twelve (12) calendar months (if the Center has not been in operation for a full twelve (12) months, the last six (6) months of LLC Profit will be annualized for this calculation), minus (b) the LLC's outstanding Principal Indebtedness, with this amount multiplied by the Membership Interest of Owners being purchased hereunder.

The determination that a Fundamental Regulatory Change has occurred shall be made by (a) counsel to AmSurg, with the concurrence of counsel to Owners, (b) counsel to Owners, with the concurrence of counsel to AmSurg or (c) if counsel to AmSurg and Owners cannot concur, by a nationally recognized law firm with expertise in health care law jointly selected by AmSurg and Owners.

The Membership Interest that may be purchased by AmSurg pursuant to this Section will not exceed the minimum Membership Interest required to be purchased as a result of the Fundamental Regulatory Change.

In the event of a Fundamental Regulatory Change and the exercise by AmSurg of its option as described above, the purchase price of the Membership Interest purchased shall be determined and payable in the manner hereinafter set forth:

12.8.1. Owners shall be paid 20% of the purchase price (net after reduction for any obligations owed by any Owner to the LLC), in cash and 80% by AmSurg Corp.'s non-negotiable promissory note payable in four (4) approximately equal annual installments of principal, commencing twelve (12) months

after the closing, together with interest at a rate equal to one-half percentage point over the Prime Rate.

The note shall contain provisions for (a) the acceleration of the entire unpaid balance of principal and accrued interest at the option of the holder in the event of default in payment of any principal or interest when due, (b) the payment of reasonable attorneys' fees in the event of default, and (c) prepayment, without penalty, of all or any part of the unpaid principal, any prepayment being first applied to then accrued interest.

12.8.2. If in dispute, all determinations of LLC Profit required under this Section 12.8 shall be made by an independent certified public accountant acceptable to both Owners and AmSurg and any such determination so made shall be binding on all parties.

12.8.3. If an Owner's Membership Interest is acquired pursuant to this Section 12.8, such Owner will be distributed a pro rata share of the Available Cash Flow allocated to that Membership Interest for the month in which AmSurg purchases the Membership Interest based upon the number of days during such month prior to such purchase in relation to the total number of days in such month. Such distribution shall be made within ninety (90) days after the end of such month.

12.8.4. No payment other than those specifically provided for herein shall be due or payable with respect to the Membership Interest of any Owner. Any debt due by the LLC to any Owner shall be payable according to its terms.

12.8.5. Any closing of the purchase of an Owner's Membership Interest pursuant to this Section 12.8 shall be held at the principal office of the LLC within thirty (30) days

following the exercise by AmSurg of its option to purchase such Membership Interest as described above.

At the closing, AmSurg shall pay, upon the terms specified hereinabove, the determined value of such Membership Interest to such Owner, after receiving appropriate releases and satisfactions.

12.8.6. AmSurg may transfer or assign any of its rights to purchase the Membership Interest of an Owner to AmSurg's Affiliates or assigns.

12.8.7. If AmSurg or its Affiliate purchases some or all of the Membership Interest of an Owner pursuant to this Section 12.8, AmSurg will use its best efforts to have such Owner released from the appropriate portion of Principal Indebtedness, if any, guaranteed by such Owner. In the event that an Owner is not so released, AmSurg and AmSurg Corp. will indemnify and hold harmless such Owner from liability resulting from that portion of such guaranty.

12.9. **Amendment to Exhibit A.** An appropriate amendment to the amounts shown for capital account balances and Membership Percentages on Exhibit A hereto shall be made upon: (a) any assignment or termination of a Membership Interest described in Sections 12.1.1 through 12.1.6 hereof, (b) the admission of any New Member under Section 12.7 hereof, or (c) any purchase of a Membership Interest pursuant to Section 12.8 hereof.

12.10. **Pledge of Membership Interest.** No pledge of an Owner's interest may be made without the approval of AmSurg. The pledge of or the granting of a security interest, lien or other encumbrance in or against any or all of a Member's Membership Interest shall not constitute an

assignment or transfer of such Membership Interest for purposes of this Article 12 or cause such Member to cease to be a Member or to cease to have the power to exercise any of its rights or powers as a Member. Any such pledgee shall not be a Member and shall not be entitled to any rights of a Member, other than the right to receive profit and loss allocations and distributions to the extent permitted by applicable law, unless such pledgee becomes a Member pursuant to Section 12.3 hereof. In any event, the foreclosure of or exercise of other secured party remedies with respect to such pledge, security interest, lien or other encumbrance resulting in an Assignment of any such Membership Interest shall nonetheless be an Assignment subject to the restrictions of Article 12. AmSurg shall have the right to pledge or grant a security interest, lien or other encumbrance in or against any or all of its Membership Interest.

### 13. **DISSOLUTION, WINDING UP, AND TERMINATION OF THE LLC'S EXISTENCE**

13.1. **Term.** The term of the LLC shall continue until earlier terminated in accordance with the provisions of this Agreement. The Members intend for the term of the LLC, and their involvement in the operation thereof, to continue until the Members mutually agree otherwise. No Member shall take any action unilaterally to terminate the LLC or withdraw as a Member.

13.2. **Events Causing Dissolution and Winding Up.** The LLC shall be dissolved and its affairs wound up only upon the occurrence of the following events (individually, a "Dissolution Event"):

13.2.1. At any time with the prior approval of those Members holding 100% of the voting power and 100%

of the Membership Interests in the LLC; or

13.2.2. Termination of this Agreement pursuant to Section 14.12 hereof.

13.3. **Winding Up Affairs on Dissolution.** Upon dissolution of the LLC, the Officers or other persons required or permitted by law to carry out the winding up of the affairs of the LLC shall promptly notify all Members of such dissolution; shall wind up the affairs of the LLC; shall prepare and file all instruments or documents required by law to be filed to reflect the dissolution of the LLC; and, after collecting the debts and obligations owed to the LLC and after paying or providing for the payment of all liabilities and obligations of the LLC, shall distribute the assets of the LLC in accordance with Section 6.5. In determining the final balance of the Book Capital Accounts, assets of the LLC which are distributed in kind to the Members, if any, shall be treated as if sold for their fair market value and allocations shall be made pursuant to Sections 6.1 and 6.2 hereof.

13.4. **Waiver of Right to Partition and Decree of Dissolution.** As a material inducement to each Member to execute this Agreement, each Member covenants and represents to each other Member that, during the period beginning on the date of this Agreement, no Member, nor such Member's heirs, representatives, successors, transferees or assigns, will attempt to make any partition whatever of the assets of the LLC or any interest therein whether now owned or hereafter acquired, and each Member waives all rights of partition provided by statute or principles of law or equity, including partition in kind or partition by sale. The Members agree that irreparable damage would be done to the goodwill and reputation of the LLC if any Member should bring an action in a court to dissolve the

LLC. The Members agree that this Agreement provides fair and just provisions for payment and liquidation of the interest of any Member in the LLC, and fair and just provisions to prevent a Member from selling or otherwise alienating its interest in the LLC. Accordingly, each Member hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by court of a liquidator or receiver for the LLC.

#### 14. GENERAL PROVISIONS

14.1. **Notices.** Except as otherwise provided in this Agreement, any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be duly given

14.1.1. if delivered in writing, personally to the person to whom it is authorized to be given; or

14.1.2. if sent by certified or registered mail, overnight courier service or facsimile to the address of the Member or Director reflected in the records of the LLC.

Any such notice shall be deemed to be given as of the date so delivered, if delivered personally, as of the date on which the same was deposited in the United States mail, postage prepaid, addressed and sent as aforesaid, or on the date received if sent by overnight courier services or electronic facsimile.

14.2. **Section Captions.** Section and other captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

14.3. **Applicable Law.** This Agreement and the rights of the Members shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee.

14.4. **Severability.** In case any one or more of the provisions contained in this



Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby. Without limiting the foregoing, the Members agree that in the event a court or arbitrator with appropriate jurisdiction determine that the geographic area and/or the time restrictions set forth in Section 8.2 hereof are unenforceable as a matter of law, then the court or arbitrator may modify the unenforceable provision in order to make it enforceable and such modification will be deemed to be valid amendment to this Agreement to which each Owner and his or her Affiliates will be bound.

14.5. **Binding Effect.** Except as herein otherwise provided to the contrary, this Agreement shall be binding upon, and inure to the benefit of, the Members and their respective heirs, executors, administrators, successors, transferees and assigns.

14.6. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural, and vice versa.

14.7. **Amendment.** This Agreement may be amended in writing (a) with the consent of a majority of the AmSurg Membership Interests and a majority of the Owners' Membership Interests and (b) with respect to Exhibit A hereto, under the circumstances set forth in Sections 4.8 and 12.9 hereof. In the event that the parties hereto agree to admit a New Member pursuant to Section 12.7 hereof, the parties will amend this Agreement accordingly.

14.8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

14.9. **Interpretation in Accordance with Requirements for Partnership Tax Treatment.** The LLC is intended to be treated as a partnership for federal income tax purposes, and this Agreement shall be interpreted in a manner consistent with such intended tax treatment.

14.10. **Arbitration.** All disputes arising under this Agreement shall be resolved by binding arbitration pursuant to the rules of the American Health Lawyers Association Dispute Resolution Service ("AHLA") then pertaining. The arbitration proceedings shall be held in New York, New York. The procedures for conducting discovery in connection with any such arbitration proceeding shall be determined by the mutual agreement of the Members party to the arbitration proceeding or, if the Members cannot agree, by the arbitrators. The arbitrators shall apply the substantive laws of the State of Tennessee and the United States.

The Members may, if they are able to do so, agree upon one arbitrator; otherwise, there shall be three arbitrators selected to resolve disputes pursuant to this Section 14.10, one named in writing by each Member party to the arbitration proceeding within thirty (30) days after notice of arbitration is served upon any Member by another Member and a third arbitrator selected by the two arbitrators selected by the Members within fifteen (15) days thereafter.

If the two arbitrators cannot select a third arbitrator within such fifteen (15) days, either Member may request that the AHLA select such third arbitrator. If one Member does not choose an arbitrator within thirty (30) days, the other Member shall request that the AHLA name such other arbitrator. No one shall serve as arbitrator who is in any way financially interested in this Agreement or in the affairs of any Member.

Each of the parties to the arbitration shall pay its own expenses of arbitration and one-half of the expenses of the arbitrators. If any position by any party to the arbitration, or any defense or objection thereto, is deemed by the arbitrators to have been unreasonable, the arbitrators shall assess, as part of their award against the unreasonable

Member or reduce the award to the unreasonable Member, all or part of the arbitration expenses (including reasonable attorneys' fees) of the other Member and of the arbitrators.

14.11. **Access to Books and Records by Governmental Officials.** Upon written request of the Secretary of Health and Human Services or the Comptroller General or any other duly authorized representatives thereof, each Member shall make available to the Secretary those contracts, books, documents and records necessary to verify the nature and extent of the cost of providing its services to the Center. Such inspection shall be available up to four (4) years after such services are rendered. If any Member carries out any of the duties of this Agreement through subcontract with a value of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related individual or organization, such Member agrees to include this requirement in such subcontract. If a request from the Secretary or his representative is served on a Member, that Member will notify the LLC in writing prior to responding to the request.

14.12. **Limited Renegotiation** This Agreement shall be construed to be in accordance with any and all federal and state laws, including laws relating to Medicare and Medicaid. In the event there is a change in such laws, whether by statute, regulation, agency or judicial decision, interpretation, pronouncement, guidance or otherwise that has any material effect on any term of this Agreement, then the applicable term(s) of the Agreement shall be subject to renegotiation and any Member may request renegotiation of the affected term or terms of this Agreement, upon written notice to the other Member, to remedy such condition.

The Members expressly recognize that upon request for renegotiation, each Member has a duty and obligation to the others only to renegotiate the affected term(s) in good faith and, further, each Member expressly agrees that its consent to proposals submitted by the other Members during renegotiation efforts shall not be unreasonably withheld. Should the Members agree to amend this Agreement to renegotiate the term or terms so affected, the Members shall use their best efforts to cause

such renegotiated terms to be approved by the Board and the Members.

Should the Members be unable to renegotiate the term or terms so affected so as to bring it/them into compliance with the statute, regulation, agency or judicial decision, interpretation, pronouncement, guidance or other reason that rendered it/them unlawful or unenforceable within sixty (60) days of the date on which notice of a desired renegotiation is given, then the Members shall be entitled, after the expiration of said sixty (60) day period, to terminate this Agreement upon thirty (30) additional days written notice to the other Members.

14.13. **Integrated Agreement.** This Agreement constitutes the entire understanding and agreement between the Members with respect to the subject matter hereof, and there are no agreements, understandings, restrictions, representations or warranties among the Members other than those set forth herein or herein provided for.

The Members acknowledge that they have independently negotiated the provisions of this Agreement, that they have relied upon their own counsel as to matters of law and application and that no Member has relied on any other Member with regard to such matters. The Members expressly agree that there shall be no presumption created as a result of any Member having prepared in whole or in part any provision of this Agreement.

[Remainder of page intentionally left blank]

**CERTIFICATE**

**IN WITNESS WHEREOF**, the undersigned hereby agree, acknowledge and certify that the foregoing Agreement constitutes the Operating Agreement of Diagnostic Endoscopy, LLC adopted by the Members.

**AMSURG HOLDINGS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OWNERS:**

\_\_\_\_\_  
Stuart Waldstreicher, M.D.

\_\_\_\_\_  
Peter Gardner, M.D.

\_\_\_\_\_  
Ronald Cirillo, M.D.

\_\_\_\_\_  
William Pintauro, M.D.

\_\_\_\_\_  
Neda Khaghan, M.D.

\_\_\_\_\_  
Felice Zwas, M.D.

\_\_\_\_\_  
Nelson Bonheim, M.D.

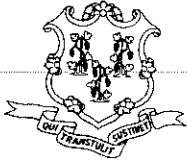
\_\_\_\_\_  
Alan Selkin, M.D.

DRAFT

EXHIBIT A

<u>Member Name and Address</u>	<u>Capital Account Balance</u>	<u>Membership Percentage</u>
AmSurg Holdings, Inc. 20 Burton Hills Boulevard Nashville, TN 37215 FEIN: 62-1595888		62%
Stuart Waldstreicher, M.D. _____ SSN: _____		
Peter Gardner, M.D. _____ SSN: _____		
Ronald Cirillo, M.D. _____ SSN: _____		
William Pintauro, M.D. _____ SSN: _____		
Neda Khaghan, M.D. _____ SSN: _____		
Felice Zwas, MD _____ SSN: _____		
Nelson Bonheim, M.D. _____ SSN: _____		
Alan Selkin, M.D. _____ SSN: _____		
<b>TOTAL:</b>		100%

DRAFT



# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

*Office of Health Care Access*

September 21, 2012

VIA FAX ONLY

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

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

RE: Certificate of Need Application; Docket Number: 12-31772-CON  
Diagnostic Endoscopy Center, LLC and AmSurg Corp. d/b/a AmSurg Holdings, Inc.  
Proposal to Change Ownership of Diagnostic Endoscopy Center, LLC

Dear Dr. Waldstreicher and Mr. McCullough:

On August 22, 2012, the Office of Health Care Access ("OHCA") received your Completeness Letter responses in the Certificate of Need ("CON") application filing of Diagnostic Endoscopy Center, LLC ("Center") and AmSurg Corp. d/b/a AmSurg Holdings, Inc. ("AmSurg") (Center and AmSurg are herein collectively referred to as "Applicants"), proposing to change ownership of the Center by way of AmSurg acquiring a 62% ownership interest in the Center for \$12,583,950.

OHCA has reviewed the Completeness Letter Responses and requests the following additional information pursuant to General Statutes §19a-639a(c):

1. Please provide a copy of Schedule 4.15(a) as referenced in the Membership Interest Purchase Agreement.
2. Provide the names of each anticipated member of Diagnostic Endoscopy, LLC and, for each, identify the state of medical licensure.

*An Equal Opportunity Employer*

410 Capitol Ave., MS#13HCA, P.O.Box 340308, Hartford, CT 06134-0308

Telephone: (860) 418-7001 Toll-Free: 1-800-797-9688

Fax: (860) 418-7053

In responding to the questions contained in this letter, please repeat each question before providing your response. **Paginate and date** your response (e.g., each page in its entirety). Information filed after the initial CON application submission (e.g. completeness response letter, prefile testimony, late file submissions and the like) must be numbered sequentially from the Applicants' document preceding it. Please reference "Docket Number: 12-31772-CON." Submit one (1) original and five (5) hard copies of your response. In addition, please submit a scanned copy of your response including all attachments on CD in an Adobe format (.pdf) and in an MS Word format.

If you have any questions concerning this letter, please feel free to contact me at (860) 418-7012.

Sincerely,

AV *Steven Lazarus*

Steven W. Lazarus  
Associate Health Care Analyst

\*\*\*\*\*  
\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

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STATE OF CONNECTICUT  
OFFICE OF HEALTH CARE ACCESS

FAX SHEET

TO: Stuart Waldstreicher

FAX: (203) 329-8855

AGENCY: Diagnostic Endoscopy Center

FROM: OHCA/STEVEN LAZARUS

DATE: 09/21/2012 Time: \_\_\_\_\_

NUMBER OF PAGES: 3  
*(including transmittal sheet)*



**Comments:**

Completeness Letter  
CON Docket Number: 12-31772-CON

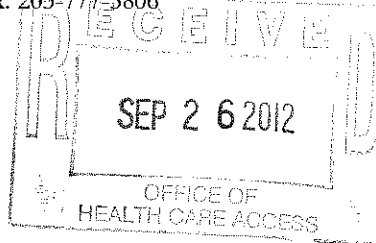
**PLEASE PHONE  
TRANSMISSION PROBLEMS**

**IF THERE ARE ANY**

**BERSHTEIN, VOLPE & McKEON P.C.**

ATTORNEYS AT LAW  
105 COURT STREET, THIRD FLOOR  
NEW HAVEN, CONNECTICUT 06511  
203-777-5800

Fax: 203-777-5806



Michele M. Volpe  
Direct Dial (203) 777-6995

September 25, 2012  
Via Overnight Mail

Steven W. Lazarus  
Associate Health Care Analyst  
State of Connecticut  
Office of Health Care Access  
410 Capitol Avenue, MS#13HCA  
P.O. Box 340308  
Hartford, Connecticut 06134-0308

Re: Certificate of Need Application; Docket Number: 12-31772-CON  
Diagnostic Endoscopy, LLC and AmSurg Corp. d/b/a AmSurg Holdings, Inc.  
Proposal to Change Ownership of Diagnostic Endoscopy, LLC

Dear Mr. Lazarus:

Enclosed please find the response to the additional information requested by OHCA on September 21, 2012 regarding the Certificate of Need Application for the change of ownership of Diagnostic Endoscopy LLC. Enclosed is one (1) original and five (5) hard copies of the responses and a CD of the responses and documents in Adobe format (.pdf) and MS Word format.

Please do not hesitate to contact me if you have any questions or require additional information.

Thank you.

Very truly yours,

Michele M. Volpe

MMV/kgg

Enclosures



**BERSHTEIN, VOLPE & McKEON P.C.**  
ATTORNEYS AT LAW  
105 COURT STREET, THIRD FLOOR  
NEW HAVEN, CONNECTICUT 06511  
203-777-5800  
Fax: 203-777-5806

Michele M. Volpe  
Direct Dial (203) 777-6995

September 25, 2012

Steven W. Lazarus  
Associate Health Care Analyst  
State of Connecticut  
Office of Health Care Access  
410 Capitol Avenue, MS#13HCA  
P.O. Box 340308  
Hartford, Connecticut 06134-0308

Re: Certificate of Need Application; Docket Number: 12-31772-CON  
Diagnostic Endoscopy, LLC and AmSurg Corp. d/b/a AmSurg Holdings, Inc.  
Proposal to Change Ownership of Diagnostic Endoscopy, LLC

Dear Mr. Lazarus:

Below are the responses to the request for additional information sent by OHCA on September 21, 2012.

1. Please provide a copy of Schedule 4.15(a) as referenced in the Membership Interest Purchase Agreement.

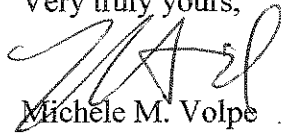
**Please see Attachment O for a copy of Schedule 4.15(a) of the Membership Interest Purchase Agreement. Please note confidential salary information has been redacted.**

2. Provide the names of each anticipated member of Diagnostic Endoscopy, LLC and, for each, identify the state of medical licensure.

**Please see Attachment P for a list of all the anticipated members of Diagnostic Endoscopy, LLC and the state of medical licensure.**

If you should require additional information, please contact our office and we will ensure that such information is forthcoming. Thank you.

Very truly yours,



Michèle M. Volpe

MMV/kgg  
Enclosures

Attachment O

Copy of Schedule 4.15(a) of the Membership Interest Purchase Agreement

**MEMBERSHIP INTEREST PURCHASE AGREEMENT**

Schedule 4.15(a) Page 1 of 2

Between AmSurg Holdings, Inc. and Diagnostic Endoscopy LLC

Employees

Attached:

\_\_\_\_\_  
For Diagnostic Endoscopy LLC

\_\_\_\_\_  
Diagnostic Endoscopy 04.15(a) (Employees) 7/2/2012

11:24 AM

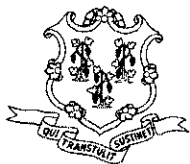
Page 1 of 1

Position Codes	NAME	POSITION	Annualized Payrolls		Payroll Register ended 4/27/12			Payroll Register ended 4/13/12			Payroll Register ended 3/30/12		
			Hours	Gross Pay	Field Hours	Avg. Rate	Gt. Pay	Field Hours	Avg. Rate	Gt. Pay	Field Hours	Avg. Rate	Gt. Pay
Clin	Alto, Charlea	Scops Tech - FT	2,160	\$	80.0	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	Barbieri, Debra	RN - FT	2,160	\$	80.0	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	Berry-Loeser, Patricia	RN - PD	1,800	\$	28.2	\$	13.0	\$	37.5	\$	37.5	\$	
Clin	Blythe, Barbara	LPN - FT	1,800	\$	80.0	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	Cabehati, Geraldine A	Nurse Admin - FT	2,160	\$	80.0	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	Cacchione, Amargo	RN - PD	1,800	\$	9.8	\$	9.0	\$	9.0	\$	9.0	\$	
SUP	Cacchione, Linda M	Recanition - FT	2,160	\$	81.0	\$	81.0	\$	81.0	\$	81.0	\$	
Clin	Chambaz, Debra	Q NA - PD	1,800	\$	82.0	\$	38.5	\$	53.5	\$	53.5	\$	
SUP	DEB, Suzanne	Scheduler - FT	2,160	\$	83.3	\$	81.5	\$	85.3	\$	85.3	\$	
Clin	Edgett, Stacy L	Endo Tech - FT	2,160	\$	80.5	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	Fanda, Sharon	RN - FT Ampul to PD	2,160	\$	80.0	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	Fletcher, Jennifer L	RN - FT	2,160	\$	80.0	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	Georgie, Maurna	Scops Tech - FT	2,160	\$	80.0	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	Grande, Jean	RN - PD	2,160	\$	13.3	\$	4.3	\$	31.5	\$	31.5	\$	
Clin	Henderson, Michelle A	RN - FT	2,160	\$	18.0	\$	9.8	\$	38.0	\$	38.0	\$	
Clin	Hicks, Camille	CMA - FT	2,160	\$	80.0	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	Kaufsch, Judith R	RN/AR - FT	2,160	\$	82.5	\$	81.0	\$	85.0	\$	85.0	\$	
Clin	Krauss, Carol J	Endo Tech - FT	2,097	\$	80.3	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	LaGuerre, Jean Y	Scops Tech - PD	2,160	\$	27.8	\$	9.0	\$	27.5	\$	27.5	\$	
Clin	Martin, Kathleen	Endo Tech - retrained	2,040	\$	80.0	\$	80.0	\$	80.0	\$	80.0	\$	
Clin	Mazzoni-Leahward, Mary	RN - PD	2,160	\$	29.7	\$	94.5	\$	94.5	\$	94.5	\$	
Clin	Mejia, Wilfredo	Recanition - PD	2,160	\$	85.0	\$	83.3	\$	80.0	\$	80.0	\$	
Clin	MW, Rita	RN - PD	2,160	\$	43.3	\$	19.8	\$	8.5	\$	8.5	\$	
Clin	Rene, AnnMarie	RN - PD	2,160	\$	17.5	\$	30.0	\$	34.5	\$	34.5	\$	
Clin	Romero, Linda	RN - PD	2,160	\$	32.8	\$	17.5	\$	18.0	\$	18.0	\$	
Clin	Rotante, Mary C	Charge Nurse - FT	2,160	\$	80.0	\$	112.0	\$	80.0	\$	80.0	\$	
Clin	Van, Cam We G	RN - FT	2,160	\$	80.0	\$	80.0	\$	80.0	\$	80.0	\$	
Clin			3,258	\$	538	\$	1,459	\$	1,527	\$	1,527	\$	
<b>TOTALS SECTION</b>													
Clin		CLINICAL POSITIONS	3,258	\$									
SUP		SUPPORT POSITIONS	2,295	\$									
<b>GRAND TOTALS</b>			5,553	\$									

Attachment P

**Anticipated Members of Diagnostic Endoscopy and State of Medical Licensure**

<b>Anticipated Member</b>	<b>State of Medical Licensure</b>
Nelson A. Bonheim, M.D.	Connecticut
Ronald J. Cirillo, M.D.	Connecticut
Peter W. Gardner, M.D.	Connecticut
Neda Khaghan, M.D.	Connecticut
William M. Pintauro, M.D.	Connecticut
Alan E. Selkin, M.D.	Connecticut
Stuart Waldstreicher, M.D.	Connecticut
Felice R. Zwas, M.D.	Connecticut
Darlene Negbenbor, M.D.	Connecticut
Neal J. Schamberg, M.D.	Connecticut



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

January 17, 2013

VIA FAX ONLY

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

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

RE: Certificate of Need Application, Docket Number 12-31772-CON  
Diagnostic Endoscopy Center, LLC and AmSurg Corp. d/b/a AmSurg Holdings, Inc.  
Proposal to Change Ownership of Diagnostic Endoscopy Center, LLC  
Interrogatories

Dear Dr. Waldsteicher and Mr. McCullough:

Please address the following questions to be filed with the Office of Health Care Access ("OHCA") regarding your Certificate of Need ("CON") proposal filed with OHCA:

1. OHCA has an obligation to inform other divisions within the Department of Public Health of potential violations concerning applicable law. If OHCA were to grant this application, would the physician owners be subject to disciplinary action under the corporate practice of medicine doctrine?
2. Please provide a legal analysis supporting your position with respect to the corporate practice of medicine doctrine.
3. Does AmSurg Corp d/b/a Amsurg Holdings, Inc. have any concluded, pending or threatened legal action against it in Connecticut or any other jurisdiction involving the corporate practice of medicine doctrine?

The response to these interrogatories must be submitted to OHCA no later than **12:00 pm, on Thursday, February 7, 2013**. If you are unable to meet the specified time for filing the interrogatories, you must request a time extension in writing, detailing the reasons for not being able to meet the specified deadline.

Please contact Steven W. Lazarus, Associate Health Care Analyst at (860) 418-7012, if you have any questions concerning this request.

Sincerely,

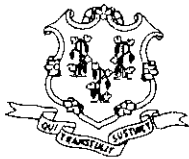


Kevin T. Hansted  
Staff Attorney

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STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
OFFICE OF HEALTH CARE ACCESS

FAX SHEET

TO: MICHELLE VOLPE, ESQ.  
FAX: (203) 777-5806  
AGENCY: BERSHTEIN, VOLPE & MCKEON  
FROM: KEVIN HANSTED  
DATE: 1/17/13 TIME: \_\_\_\_\_  
NUMBER OF PAGES: 3  
*(including transmittal sheet)*



Comments: DN: 12-31772-CON

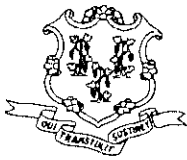
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\*\*\* TX REPORT \*\*\*  
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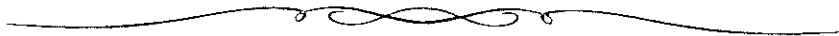
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STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
OFFICE OF HEALTH CARE ACCESS

FAX SHEET

TO: STUART WALDSTREICHER, M.D.  
FAX: (203) 329-8855  
AGENCY: DIAGNOSTIC ENDOSCOPY CENTER, LLC  
FROM: KEVIN HANSTED  
DATE: 1/17/13 TIME: \_\_\_\_\_  
NUMBER OF PAGES: \_\_\_\_\_  
*(including transmittal sheet)*



Comments: DN: 12-31772-CON

*PLEASE PHONE IF THERE ARE ANY TRANSMISSION PROBLEMS.*

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\*\*\* TX REPORT \*\*\*  
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STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
OFFICE OF HEALTH CARE ACCESS

FAX SHEET

TO: ROBERT MCCULLOUGH

FAX: (615) 665-0755

AGENCY: AMSURG CORPORATION

FROM: KEVIN HANSTED

DATE: 1/17/13 TIME: \_\_\_\_\_

NUMBER OF PAGES: \_\_\_\_\_  
*(including transmittal sheet)*

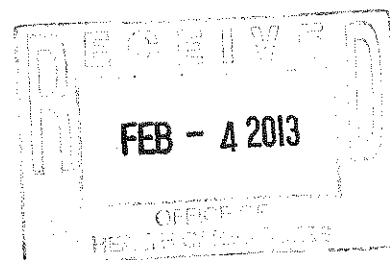


Comments: DN: 12-31772-CON

**PLEASE PHONE IF THERE ARE ANY TRANSMISSION PROBLEMS.**

# FAX TRANSMISSION

**BERSHTEIN, VOLPE & McKEON P.C.**  
ATTORNEYS AT LAW  
105 COURT STREET  
THIRD FLOOR  
NEW HAVEN, CT 06511  
(203) 777-5800 Fax: (203) 777-5806



**FAX #:** (860) 418-7053

**DATE:** February 4, 2013

**TO:** Kevin T. Hansted, Staff Attorney  
Steven Lazarus, Associate Health Care Analyst  
State of Connecticut  
Department of Public Health  
Division of Office of Health Care Access

**PAGES:** 7, including this page

**FROM:** Michele M. Volpe

**MATTER #:** 125728

**SUBJECT:** Certificate of Need Application; Docket Number: 12-31772-CON  
Diagnostic Endoscopy, LLC and AmSurg Corp. d/b/a AmSurg Holdings, Inc.  
Proposal to Change Ownership of Diagnostic Endoscopy, LLC

**CONFIDENTIALITY NOTICE**

Please note that the information contained in this fax is confidential and privileged and is intended only for use by the named receiver. If you have received this fax in error, please call 203-777-5800. Any use of this fax or its contents, including any dissemination or copying, is prohibited. Attorneys receiving this fax in error are directed to review ABA formal ethics opinion no. 92-368.

**COMMENTS:**

Please see the attached correspondence.

Thank you.

**BERSHTEIN, VOLPE & McKEON P.C.**  
ATTORNEYS AT LAW  
105 COURT STREET, THIRD FLOOR  
NEW HAVEN, CONNECTICUT 06511  
203-777-5800  
Fax: 203-777-5806

Michele M. Volpe  
Direct Dial (203) 777-6995

February 4, 2013  
Via Federal Express  
and Facsimile (860) 418-7053

Kevin T. Hansted  
Staff Attorney  
State of Connecticut  
Department of Public Health  
Office of Health Care Access  
410 Capitol Avenue, MS#13HCA  
Hartford, Connecticut 06134

**FEB - 4 2013**

OFFICE OF  
HEALTH CARE ACCESS

Re: Certificate of Need Application; Docket Number: 12-31772-CON  
Diagnostic Endoscopy, LLC and AmSurg Corp. d/b/a AmSurg Holdings, Inc.  
Proposal to Change Ownership of Diagnostic Endoscopy, LLC

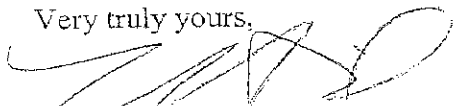
Dear Attorney Hansted:

Enclosed please find the responses to the interrogatories requested by the Office of Health Care Access on January 17, 2013 regarding the Certificate of Need Application for the change of ownership of Diagnostic Endoscopy LLC. Enclosed is one (1) original and five (5) copies of the responses and a CD of the responses and documents in Adobe format (.pdf) and MS Word format.

Please do not hesitate to contact me if you have any questions or require additional information.

Thank you.

Very truly yours,

  
Michele M. Volpe

MMV/bt  
Enclosures

**BERSHTEIN, VOLPE & McKEON P.C.**  
ATTORNEYS AT LAW  
105 COURT STREET, THIRD FLOOR  
NEW HAVEN, CONNECTICUT 06511  
203-777-5800  
Fax: 203-777-5806

Michele M. Volpe  
Direct Dial (203) 777-6995

February 4, 2013  
Via Federal Express  
and Facsimile (860) 418-7053

Kevin T. Hansted  
Staff Attorney  
State of Connecticut  
Department of Public Health  
Office of Health Care Access  
410 Capitol Avenue, MS#13HCA  
Hartford, Connecticut 06134

Re: Certificate of Need Application; Docket Number: 12-31772-CON  
Diagnostic Endoscopy, LLC and AmSurg Corp. d/b/a AmSurg Holdings, Inc.  
Proposal to Change Ownership of Diagnostic Endoscopy, LLC

Dear Attorney Hansted:

Below are the responses to the interrogatories sent by the Office of Health Care Access on January 17, 2013.

**INTERROGATORY:**

1. OHCA has an obligation to inform other divisions within the Department of Public Health of potential violations concerning applicable law. If OHCA were to grant this application, would the physician owners be subject to disciplinary action under the corporate practice of medicine doctrine?

**RESPONSE:**

No. The physician owners of Diagnostic Endoscopy LLC, or the proposed successor thereto ("Diagnostic Endoscopy"), would not be subject to disciplinary action under the corporate practice of medicine ("CPM") doctrine if OHCA grants this Certificate of Need Application, Docket Number 12-31772-CON.

**INTERROGATORY:**

2. Please provide a legal analysis supporting your position with respect to the corporate practice of medicine doctrine.

**RESPONSE:**

The CPM doctrine does not apply to ambulatory surgery facilities ("ASCs") because ASCs do not render professional services or practice medicine. The CPM doctrine regulates the practice of medicine under the physician licensing statute, General Statutes § 20-9, not the operation of ASC facilities licensed under General Statutes § 19a-493b. Section 19a-493b recognizes that corporations may be "joint" owners of ASCs, and OHCA and the Department of Public Health ("Department") have previously approved the applications of a number of corporately-owned ASCs. In addition, throughout the country, it is widely-accepted that ASCs may be owned by corporate entities and such ownership does not violate the CPM doctrine.

ASCs are regulated by Connecticut General Statutes §19a-493b, which expressly contemplates ownership of ASCs by corporations. The CPM doctrine, which arises from the physician licensure statute, is not implicit in §19a-493b, nor does its rationale apply to licensed, regulated facilities. The CPM doctrine was developed to protect the public from corporate middlemen interfering with physicians' medical judgment.<sup>1</sup> ASCs are facilities utilized by independent physicians, who decide whether and where to perform procedures, and the licensed physicians maintain control over all medical professional decision making. Diagnostic Endoscopy operates a licensed, regulated ASC, and the CPM doctrine does not apply to it.

Diagnostic Endoscopy was formed under the general provisions of Connecticut's limited liability statute, § 34-119(a), not the provisions of §§ 34-119(b) or (c) which apply to LLCs that render "professional services." The ASC was then licensed by the Department and approved by OHCA pursuant to General Statutes § 19a-493b. It is well-established that ASCs licensed pursuant to § 19a-493b may be owned by non-physicians, including corporate entities. OHCA has approved the applications of at least nine ASCs that are not wholly-owned by physicians. In addition, numerous facilities in Connecticut are owned by corporate entities. The "corporate practice of medicine doctrine," which is based upon the statute prohibiting unlicensed individuals and entities from engaging in the practice of medicine or surgery, does not apply to Diagnostic Endoscopy at all because Diagnostic Endoscopy does not render professional services or practice medicine. Diagnostic Endoscopy owns a facility (i.e. a building, equipment, and support staff) at which licensed physicians perform procedures. All of the physicians who own or utilize the facility practice medicine out of their own separate medical practices.

---

<sup>1</sup> See *Mendlinger v. Conn. State Dental Comm'n.*, No. CV020516918, 2003 Conn. Super. LEXIS 3477, at \*6-7 (Conn. Super. Ct. Dec. 17, 2003), rev'd on other grounds, 84 Conn. App. 639 (2004) ("Traditionally the prohibition on the corporate practice of medicine stemmed from a perceived need to protect the public from the commercial exploitation of the practice of medicine. It has been said to be against public policy to permit a middleman to intervene for profit in establishing the professional relationship between members of the medical profession and members of the public. . . . The basic rationale of the corporate practice prohibition [is] the potential for a secondary and divided loyalty to the patient.") (Citations omitted; internal quotation marks omitted).

Some states, such as California, have explicitly adopted the CPM doctrine in their statutes or case law. The CPM doctrine has not been codified in Connecticut's General Statutes, nor has it been explicitly adopted in Connecticut's appellate-level case law. Some Connecticut cases have applied a similar doctrine under the licensing statutes for individual optometrists and dentists, General Statutes §§ 20-133a, 20-122, and 20-123.<sup>2</sup> The CPM doctrine was also cited in an old Attorney General Opinion from the 1950s.<sup>3</sup> The foregoing authority does not, however, apply to ASCs, which are licensed under General Statutes § 19a-493b, not the statutes regulating individual practitioners, and which do not engage in the practice of medicine.

The dentistry/optometry cases considered professionals whose dental or optometry practices were owned by non-professionals, and who were *employees* of the non-professional owners. Diagnostic Endoscopy does not employ any of the physicians who own an interest in or perform surgery at the ASC. Notably, none of the cases sanctioned physicians for investing in medical *facilities* similar to ASCs.<sup>4</sup> One Connecticut dentistry case even draws a distinction between corporate ownership of the facility where a dentist practices, and corporate ownership of the practice itself. *OCA v. Christie*, 415 F. Supp.2d 115 (D. Conn. 2006). In *OCA*, the court held that an arrangement was not illegal where a corporate entity owned the facility and its physical assets, but the dentist owned and exerted control over the practice's professional assets. The court reasoned:

Moreover, Plaintiffs do not own Dr. Christie's practice. Although they 'own' the Old PC, which includes the physical assets of the practice (e.g., furniture, equipment, leasehold), Dr. Christie is the sole shareholder of the New PC, which owns the practice's professional assets (e.g., patient contracts, provider agreements). Dr. Christie remains engaged in the practice of dentistry, free from any right of Plaintiffs to control, direct or intrude . . .

*OCA v. Christie*, 415 F. Supp.2d, at 125-26 (internal citations omitted).

The licensing statute for ASCs expressly contemplates that they may be owned by corporations. General Statutes §19a-493b(b) states: "No entity, individual, firm, partnership, **corporation**, limited liability company or association, other than a hospital, **shall individually or jointly establish or operate an outpatient surgical facility in this state without complying with chapter 368z**, except as otherwise provided by this section, and obtaining a license within the time specified in this subsection from the Department of Public Health for such facility pursuant to the provisions of this chapter . . ." (Emphasis added). The language of the statute

<sup>2</sup> See, e.g., *Mack v. Saars*, 150 Conn. 290 (1963) (optometry); *Obuchowski v. Dental Comm'n*, 149 Conn. 257 (1962) (dentistry); *Lieberman v. Conn. State Bd. of Examiners in Optometry*, 130 Conn. 344 (1943) (optometry).

<sup>3</sup> 28 Conn. Att. Gen. Op. 248 (Dec. 3, 1954).

<sup>4</sup> See *Lieberman*, 130 Conn., at 351-53 (optometrist was employed by a corporation, and received salary and commissions from his unlicensed corporate employer); *Obuchowski*, 149 Conn., at 264-65 (dental practice was owned by a dental hygienist who employed the plaintiff and controlled the practice); see also *Mendlinger*, 2003 Conn. Super. LEXIS 3477, at \*6-7 (dental practice owned for 5 years by widow of deceased dentist).

acknowledges that various business entities, including corporations, may "jointly establish" outpatient surgical facilities. The only prerequisites are compliance with Chapter 368z and obtaining a license.

As noted above, Diagnostic Endoscopy is an OHCA-approved licensed facility, which already has complied in full with §19a-493b(b). OHCA has approved the applications of at least nine ASCs with non-physician owners. See, e.g., OptiCare/HEALTHSOUTH Final Decision, Docket No. 01-505 (proposed transfer of ownership and operation of ambulatory surgical center to Tennessee partnership approved); Wilton Pain Management Final Decision, Docket No. 02-554 (proposed development of freestanding pain management center by for-profit limited liability company approved); Wilton Pain Management Expansion Final Decision, Docket No. 04-30251-CON (same); HEALTHSOUTH Surgery Center of Bridgeport Final Decision, Docket No. 06-20008-MDF (partial ownership and management of ambulatory surgery center by private corporation approved); HealthSouth Corporation and ASC Acquisition LLC Final Decision, Docket No. 07-30955-CON (proposed transfer of ownership of several ambulatory surgery centers to private investment partnership approved); Wilton Surgery Center/Stamford Health System/National Surgical Care Final Decision, Docket No. 07-30994-CON (proposed transfer of ownership of outpatient surgical facility to entity partially owned by national developer and operator of ambulatory surgery centers approved); North Haven Pain Medicine Center Final Decision, Docket No. 09-31320-CON (proposed expansion of services offered by ambulatory surgery center owned by for-profit limited liability company approved); Surgery Center of Fairfield County Final Decision, Docket No. 09-31398-CON (proposed termination of operations at outpatient surgical center owned by for-profit entity approved); and Surgery Center of Fairfield County Final Decision, Docket No. 10-31638-CON (proposed transfer of operations of outpatient surgical center owned by for-profit entity approved).

Finally, throughout the country, it is widely accepted that corporations may own ASCs, even in states where the CPM doctrine is robust. California has explicitly adopted the CPM doctrine,<sup>5</sup> and it is widely considered to be among the strongest proponents of the doctrine. Nevertheless, California permits entities that are not wholly-owned by licensed physicians to operate surgical clinics pursuant to California Health and Safety Code § 1204(b)(1). AmSurg Corp. and its subsidiaries currently own and operate twenty-one surgical centers in California.

### INTERROGATORY:

3. Does AmSurg Corp d/b/a Amsurg Holdings, Inc. have any concluded, pending or threatened legal action against it in Connecticut or any other jurisdiction involving the corporate practice of medicine doctrine?

### RESPONSE:

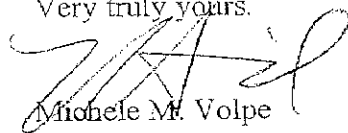
AmSurg Corp. and its subsidiaries have no concluded, pending or threatened legal action against them in Connecticut or any other jurisdiction involving the CPM doctrine.

<sup>5</sup> See *People ex rel. State Board of Medical Examiners v. Pacific Health Corp.*, 12 Cal. 2d 156 (Cal. 1938).



If you should require additional information, please contact our office and we will ensure that such information is forthcoming. Thank you.

Very truly yours,



Michele M. Volpe

MMV/bt

S:\doe\12-5701-5750\125728 DEC (CON re Am Surg Transaction)\OHCA Interrogatories 1.17.13 (re Corp Practice of Medicine Doctrine)\Response to OHCA Interrogatories 1.17.13 (Final 2.04.13).docx