PRO-LIFE ACTION LEAGUE

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HEALTH FACILITIES & SERVICES REVIEW BOARD

11-002

June 1, 2015

Dear HFSRB members,

On July 21, 2011 you granted a certificate of need to Apollo ASTC in Des Plaines with the condition that they report back to you 15 months after receiving their license to determine their compliance statistics. At that time, those testifying in support of Apollo claimed the facility would perform a great number of charitable and reduced fee procedures. (Please see board notes for that date pages 89-124.) Their license was issued on March 17, 2014, meaning that the facility's date to report back would be June 17, 2015. attachment #1

The Pro-Life Action League has serious concerns over Apollo's ASTC license. They relate to several matters:

1) the truthfulness of the ASTC license application.
2) the completeness of the testimony before the board.
3) the history of charity shown by other facilities owned by the owners of Apollo.

I have previously written to the HFSRB concerning the ASTC license application. Below is a copy of the email I sent on June 4, 2014:

Dear Ms. Avery and Mr. Urso,

Recently it came to my attention that Forest View PTSC closed in April. On further study, it was discovered that it is to be replaced by Apollo ASTC, after the upgrading of the physical plant. In looking over the HFSRB application something caught my eye on page 9/29 of this document:

http://www.hfsrb.illinois.gov/July11sars/5.%2011-002%20Apollo%20Health%20Center.pdf Please see attachment #2

VII.A. Criterion 1110.230(a) background of the Applicant states that there is no ownership interest, direct or indirect, by the applicant of any other health care facility. Looking at the actual application from your website for project 11-002 page 9/381 the application is signed by Aditi Puri, VP and Jessica Bridgewater, VP. What is not said is that neither of these persons is an owner. The owner of Apollo is Vijay Goyal. Vijay, and her husband Vinod Goyal were owners at the time of five (5) PTSCs and two (2)

ASTCs. By having the employees sign the application it avoided scrutiny into the operations, and problems, of their other licensed facilities.

But they did not avoid mentioning their other facilities in their letters in support of the CON. I would divide the letters in support into three categories: physicians on staff of the owned facilities (including Vinod Goyal, himself), the physicians who Goyal planned to have on staff for his GI and GU surgeries, and some out of the area rape crisis centers.

Why would rape crisis centers be interested in the opening of an ASTC? Because, historically, the Goyal franchise is focused on abortion. We don't know if the GI and GU surgeries will materialize, but we can be sure that it will be an abortion clinic. But that is not your concern. Your concern could be why a corporation tried to hide its connection to other health facilities in its application.

Continuing on, the costs for the project include a very high percentage classified as rent. Forest View is a Goyal enterprise. Apollo is a Goyal enterprise. I do not know the way financing of projects works, but almost 90% of the project was rent from one pocket to the other. Is this normal?

As to the charity work done historically by the Goyals: I have been following it closely on the ASTC profiles for Dimensions in Des Plaines (which closed in 2011) and Advantage in Wood Dale (the two Goyal owned ASTCs that do/did abortions and some gynecological surgeries). The amount spent per charity patient has always seemed excessive in comparison with the amount charged for other patients, leading me to wonder whether their "charity" was actually repair work for botched cases. But that is only my musings. I cannot make any claim to knowing what is going on, just that I find it unusual.

see attachment #3

If you would again look over the papers for this CON review please note the following:

- Forest View, Aanchor, ACU, Michigan Ave, and Access are PTSCs owned by the Goyals.
- Advantage and Dimensions (now closed) are/were owned by the Goyals.
- Drs. Salimi, Ventura, and Chandler already work out of the Goyal PTSCs.

I have copied and pasted the corporation papers for Forest View and Apollo. There are many corporations that the Goyals have employed the names of in their various enterprises. I lost count after 25. Many of them can be found on their various applications for PTSCs and ASTCs, corporations owning corporations (usually at an 80/20 split) all eventually owned by the Goyals. Also, some of the number of their corporate entities can be seen in some of their lawsuit. For example:

http://il.findacase.com/research/wfrmDocViewer.aspx/xq/fac.20120301_0000561.NIL.htm/qx

see attachment #4

The above case shows at the beginning some, but not all, of the corporations the Goyals own. It also finds the judge somewhat upset that it is difficult to determine how the different entities relate (see the analysis section). The below case shows what happens when you have (a) so many corporation names that are similar, and (b) dishonest employees:

see attachment #5

http://www.chicagobusiness.com/article/20131029/NEWS03/131029763/the-20-million-fraud-scheme-that-almost-never-ended

I end with the corporate document showing Vijay Goyal as President of both Apollo and Forest View. I don't know what, if anything, can be done about this. I don't blame the state for missing the connections. It's not right that two persons can represent, under oath, a corporation and deny that corporation's relationship with another corporation, both of whom are owned by the same person. Perhaps the wording on the application for CON should be altered. I am no lawyer. I can only hope that since there was no real need for this facility to open in the first place (due to underutilization in the area) and with the decrease in abortion in this state the clinic will fail financially on its own, to the detriment of no one but itself.

Jean Crocco
Pro-Life Action League

[CORPORATION FILE DETAIL REPORTS] attachment #6

Secondly, as to the truthfulness of the testimony before the board on July 21, 2011 there were three witnesses who spoke. According to the minutes they were Dr. Nisha Patel, Makiseda Stephens, and Aga Macoch.

Dr. Patel identified herself as a physician "in support of Apollo Health, basically because it could potentially provide services to my patients..." What Dr. Patel did not disclose was that she is the daughter of Vinod and Vijay Goyal, the owners of Apollo.

Makiseca Stevens does not exist in a google search other than in your board meetings. However, Marisela Stevens does exist- in fact she was and is an employee of Forest View PTSC (December 30,2011 license reapplication), Apollo ASTC on the submitted application, and Dimensions ASTC (September 10, 2010 license reapplication), all of which are Goyal-ownedentities. Ms. Stevens introduced herself at the board meeting as follows: "I work and live less than three miles away from the proposed Apollo Health Center. I am a single mother, and although I am currently working full-time, I cannot afford health insurance provided by my job. Therefore, I do not have health insurance." She then goes on about her health problems, how Apollo would offer significantly discounted rates and how she would take advantage of their Sunday hours. see attachment #7

Thus, she works for Apollo and would take advantage of the discounted rates because her employer (Apollo) does not provide health insurance. It's also worth noting that Apollo is not, in fact, open on Sundays.

Aga Macoch shows up in a Google search only in a baby shower registry and in the board

minutes. That's it. However, Eva Banach does exist and I can easily see her name, as well as Ms. Stevens names, being confusing for the court reporter.

Eva Banach, R.N. shows up as an employee of Apollo, Dimensions, and Forest View in the same license applications referred to above. Aga Macoch then goes on to talk about her experience in health care and the need for Apollo.

I was not present at the board meeting so I do not know for certain that Makiseca Stevens is actually Marisela Stevens or that Aga Macoch is actually Eva Banach. But the similarity of names and the lack of the existence on the internet of anyone else bearing the names in the minutes makes me highly suspicious. I would encourage you to reread the board minutes with these thoughts in mind.

Next up at the HFSRB meeting were the official employees. Dr. Vijay Goyal identifies herself thusly: "I'm one of the physician and Board of Directors, member of the Board of Directors of Apollo Health Center." Again, missing is that she is the owner of Apollo.

As to my third concern, charity work and reduced rates, most of my concerns are in the previously cited letter. I await to see the profile information for this ASTC. I would also be suspicious if the discounts or charity care is doled out to friends and family.

Thank you for considering my comments.

Jean Crocco

Jean Crocco
Pro-Life Action League

MR. SEWELL: No, excess capacity.

MR. ROATE: Chairman Galassie?

CHAIRMAN GALASSIE: Yes.

MR. ROATE: That's five votes in the affirmative, three votes in the negative.

CHAIRMAN GALASSIE: Motion passes.

MS. DAVIS: Thank you so much.

CHAIRMAN GALASSIE: Moving on to Item A-5, 11-002, Apollo Health Center, Limited. I believe we have three individuals that have signed up for public comment. Again, we will assume that you have not previously made public comment or submitted written comment. We would ask you to introduce yourself, and you have heard the Chair's request to keep focused and timely in your comments, please.

MS. PATEL: Hi. My name is Dr. Nisha Patel and I'm a Board-certified family practice physician in the northwest suburb. Thanks for rescheduling for today instead of a week later, because I probably wouldn't have been able to make it. So I just wanted to thank you.

So, I'm here in support of Apollo Health, basically because it could potentially provide services to my patients, many of whom are under insured, uninsured or speak a first language other than English. So, just to

give an example. I recently saw a 62-year-old Polish male. He's been in the country 20 years, working, probably making under 15K a year. He works at a job that does not provide insurance for him, and he came to me with abdominal complaints, nausea, vomiting, blood in his stool, and unintentional weight loss, which for any physician is a horrible thing to hear. Being 62, I told him he should have received a screening colonoscopy at the age of 50, but he explained to help that he didn't have insurance and every doctor he tried calling was inaccessible.

Having done my residency in the Chicagoland area, I had spent a lot of time at Cook County Hospital, and I knew they offered charity care for uninsured patients. I spent about two hours on the phone and found out that there is approximately a five-year waiting list for a screening colonoscopy and a one-year waiting list if the patient has a history of Crohn's or ulcerative colitis, which he did not have. So this patient would had been put on a five-year waiting list.

I have another patient with uterine fibroids, who has been hospitalized for anemia and needed several blood transfusions and unable to get an elective surgery.

The other thing, many of these area hospitals, I think, have turned down diagnostic and therapeutic care

to many of my patients, especially when it comes to preventative care. So, the thing I took away from the last meeting was a lot of these --

MR. MORADO: Thirty seconds.

MS. PATEL: A lot of these hospitals talk about charity care, charity care, when the majority of it is done in the form of emergency care visits, not preventative, not mammograms, not elective procedures. So, an ambulatory surgical center that provides a multilingual staff, charity care, especially focusing on preventive care services like routine cystoscopies, breast mass removals, things like that that they are not eligible for at the emergency room, would greatly benefit my patients.

So, I am very much in favor of Apollo Health. Thank you.

CHAIRMAN GALASSIE: Ms. Stevens?

MS. STEVENS: Yes, good morning. My name is Makiseca Stevens. I work and live less than three miles away from the proposed Apollo Health Center. I am a single mother, and although I am currently working full-time, I cannot afford health insurance provided by my job. Therefore, I do not have health insurance.

I have been struggling with various health issues for more than a year. My gastroenterologist

recommended that I have a diagnostic procedure performed. Since I do not have health insurance, I have been putting it off for over a year now.

I heard from my doctor that Apollo Health Center will be offering significantly discounted rates for procedure. Also, because I work Monday through Saturday, the possibility of scheduling an appointment on Sunday is very appealing to me, in addition to the discounted rates.

Please consider Apollo Health Center to open in my neighborhood. I personally know of others that are in the same situation as I am and can benefit from the opening of the center.

CHAIRMAN GALASSIE: Thank you for your comments.

And Ms. Macoch.

MS. MACOCH: I'd like to thank the Board for the opportunity to speak today. My name is Aga Macoch, and for more than nine years, I have been working in healthcare managing a variety of administrative functions, but with direct patient contact. I've also volunteered for various non-profit organizations that provide assistance and counseling to low income immigrant populations in Chicago and in suburbs. Moreover, I am an immigrant myself, arrived in the United States at the age of 15. Therefore,

I'm well placed to speak for and to understand the needs of patients who deal with an income as well as a language barrier. I'd like to share some of my experiences with you.

On a daily basis in my professional as well as community work, I'm presented with patients who have only minimal access to medical care. They are frightened by communication barriers and the overwhelming costs associated with preventive as well as remedy care. Often they choose to stay away until it is too late for them. My father was one of them. He died of a heart disease at the age of 59.

Many patients who are in dire need of medical care are unemployed, under employed, or uninsured. These patients have a limited or no ability to pay for these services they desperately need. It has been my experience that the physicians' offices receive calls from people in such circumstances on a daily basis. These patients are looking for guidance, assistance, and sometimes financial help. These are good, hard-working people in need of a helping hand. It's a mother of three children who lives in a shelter for domestic violence. It's a father of two who has been unemployed for four months. It's a young single parent with a minimum wage job and no insurance coverage.

We all know someone in such difficult circumstances.

Apollo Health Center presents an opportunity to provide accessible, low-cost, quality medical care with fewer communication barriers.

MR. MORADO: Thirty seconds.

MS. MACOCH: I support it wholeheartedly as the Apollo Health Center will be vital to my community. Please vote in support of it.

CHAIRMAN GALASSIE: Thank you very much. Appreciate your comments this morning.

And I assume we have members from Apollo Health Center. If you would come up and then introduce yourselves, be sworn in, and then we will ask for a Staff report.

(Pause)

CHAIRMAN GALASSIE: Just quickly, if you could give your names, please.

MS. SCHMIDT: My name is Vera Schmidt. I'm the Chief Executor Officer for Apollo Health Center.

MS. GOYAL: Dr. Vijay Goyal. I'm one of the physician and Board of Directors, member of the Board of Directors of Apollo Health Center.

MS. FRIEDMAN: Kara Friedman, Polsinelli Shughart, counsel for the applicant.

MS. BRIDGEWATER: My name is Jessica Bridgewater. I'm Vice-President for Apollo Health Center.

MS. FRIEDMAN: And to her left is Anne Cooper, also from Polsinelli.

MS. PURI: Aditi Puri; I'm also with Apollo.

CHAIRMAN GALASSIE: Staff report, please?

MR. CONSTANTINO: Thank you, Mr. Chairman. The applicant, Apollo Health Center, proposes to establish a multi-specialty ASTC in approximately 5,900 gross square foot of space, at a cost of approximately two and a half million dollars. The project is before you today because it proposes to establish a healthcare facility. There was no public hearing requested. However, we did receive letters of support and opposition.

The State Agency notes the following: The project patient referrals do not justify the two operating rooms being requested, because the referrals are from physician practices and are not licensed ASTC's or hospitals. There are 46 facilities within 30 minutes; 33 are not at the target occupancy.

Thank you, Mr. Chairman.

CHAIRMAN GALASSIE: Thank you, Mike.

Comments for the Board, please.

MS. SCHMIDT: Good morning, Chairman Galassie,

Board members and Staff. As I mentioned, I am the Chief Executive Officer for Apollo Health Center, and I'd like to thank you for the opportunity to present our project.

As you've heard, Apollo Health Center proposes to establish a multi-specialty surgery center with two operating rooms. Apollo's goal is to increase access to much-needed health services for low income and medically under served populations in this area. There is much talk about nationwide healthcare reform and reducing health disparities in low income, minority, and other populations. It is Apollo's goal to initiate that reform at a very grassroots level by making healthcare more accessible and affordable to those most vulnerable populations, through our hardship criteria, which will provide patients who qualify with an 80 percent discount on surgical procedures. We will commit to provide charity care to patients without means to pay, and work with community service organizations to get our message out to the medically under served populations.

It is important to understand Apollo's market area. According to the U.S. Census Bureau, this market area includes 43 medically under served areas and 11 medically under served populations. Nearly 850,000 individuals residing in Apollo's market area live below the

Federal poverty level. Access to free or low cost healthcare is imperative to the overall health of the community we propose to serve. These factors were critical in selecting Apollo's location. Apollo will be unique among ambulatory surgical centers and well positioned to care for the under served populations in the area. Apollo will be staffed by physicians and staff who speak Spanish, Polish and Russian, as well as other languages, which is key in breaking down linguistics barriers and accessing healthcare services.

Furthermore, we will offer evening, Saturday and Sunday hours to accommodate patients' work schedules. For our patients' convenience, we will also have an onsite certified laboratory, which will be able to perform pre-op testing on the same day of surgery. And, most importantly, unlike other facilities, we will be able to immediately advise patients of their eligibility for charity care. They will have piece of mind, knowing when they receive medical care that they can afford it, before the treatment takes place.

Medicaid and Medicare will be accepted, but we will also provide patients who meet our financial hardship criteria an 80 percent discount on the facility fee. In many cases, these financially-vulnerable patients are

employed but do not have insurance. Since they are not candidates for public assistance, they fall through the cracks in the system. In this economy, many of us know someone dealing with an unexpected, extended unemployment situation. There are countless people like this who are weighing the cost of continued medical insurance.

To our knowledge, no other surgery center currently offers such discounted rates and up-front charity services. While it may appear that there is capacity in area hospitals, acute care hospitals cannot be considered as viable alternatives. We are all too familiar with hospital wait times due to emergency cases and other priorities. Surgery centers provide low-cost, high-quality alternatives to hospital-based surgery. Apollo has committed that its charges for most procedures performed as its facility will be lower than hospital charges, for both patients and payers.

As already stated, patients who satisfy Apollo's criteria will receive an additional 80 percent off of the facility charges, and our referring physicians have committed to providing similar discounts off their charges. As a result, these patients can have the same procedure performed at Apollo for approximately one-fifth of what hospital charges would be. A good example of cost savings

a patient could experience at Apollo would be an upper GI endoscopy. According to Illinois Department of Public Health data, the average charge for this procedure in area hospitals is about $4,406. However, our charge for the procedure being performed at Apollo would be $3,134, which is -- represents a 37 percent savings for Apollo's patients. In addition to that, if patients qualify for the Apollo's hardship criteria, he or she would receive an additional 80 percent discount and pay only $826 for that procedure.

In summary, Apollo will offer patients significant cost savings, better access to care, and greater convenience in terms of improved location, ability to schedule more quickly, and shorter wait times compared to other hospitals. In addition, we have received support from community organizations, including non-profit organizations such as Rape Advocacy Counseling and Educational Services, Life Span, Compassion Care Network, and Mujeres Latinas, as well as primary care physicians. They all understand that Apollo will provide much needed access to vital services through charity care or discounted pricing, access that is currently lacking in our community.

I would like to hand it over to Dr. Vijay Goyal, one of our Board members. She would like to briefly

speak to Apollo's commitment to provide safety net services in our community.

CHAIRMAN GALASSIE: Thank you. Good morning, Doctor.

MS. GOYAL: Good morning, Respected Chairman and Respected Members of the Board. Good morning.

As Ms. Schmidt noted, I'm a practicing physician for the last 25 years, and as a physician, I'm thankful for the opportunity to fulfill a community service mission in a diverse community where I serve, where I practice. I do not need to travel abroad to give back. I can give back to the community right here.

I treat many patients who cannot obtain needed health services because either lack insurance or they are under insured. I cannot tell you how many times over the years I have difficulty referring patients, the uninsured patients, for diagnostic and (inaudible) services. Acute care hospitals do not generally provide the full range of services, nor necessarily they open their arms for the uninsured patients. Many surgical centers do not accept Medicaid or provide charity care at all.

As Dr. Patel noted in her statement, even public hospitals are not a viable option, since screening, the routine screening -- the waiting time could be many

years. It's unacceptable. Apollo is committed to serving this wonderful population, and we are willing to stand behind our commitment. While non-profit hospitals are required by law to provide community benefit to justify their tax exempt status, they're not held to any particular standards, and many hospitals do not guarantee charity care or even discounted care until long after the services have been rendered, which we believe is an untenable situation for a patient who may be ultimately financially responsible for a surgical procedure. We, rather, will make such determination in advance.

Moreover, tax exempt or not, the hospital business model is a competitive one in which hospitals vie and compete with one another for privately-insured patients and for the business of the most profitable specialist. This is not conducive to serving low-income patients. Apollo will be a safety net provider of health services. We will offer charity care and financial assistance to patients who qualify, and we agree to be accountable to this Board to demonstrate our contributions. Those patients who meet our financial criteria, financial hardship criteria, will receive an 80 percent discount on facility charges. Our referring physicians have also committed to providing similar discounts to the patients

who meet Apollo's financial hardship criteria.

According to 2009 questionnaire, annual questionnaire completed by ASTC's and hospitals, the State-wide average for surgical centers for charity care is 0.3 percent, and it is 4.8 percent for the self-paid patients. We anticipate that in the first year of our operation, approximately 5 percent of our patients will receive the charity care and 55 percent of our patients will receive the financial hardship discount. Apollo's number for charity care and hardship discounts are significantly higher than the State-wide and Planning Area averages for both surgical centers and for the hospitals.

As discussed earlier, we would offer affirmative charity care for non-emergency surgical procedures which are not provided by average hospital and surgical centers. Apollo will be a valuable participant in the healthcare safety net. During these hard economic times, when unemployment is at its highest, most people, most patients have no healthcare coverage due to high premiums or no jobs. There is a need for a place like Apollo, to be able to provide services to the wonderful, under privileged, uninsured and medically under served population.

Thank you.

MS. SCHMIDT: Thank you for your time and attention. We would be happy to answer any questions you may have at this time.

CHAIRMAN GALASSIE: We appreciate that.

I would open it up to the Board for questions.

MR. SEWELL: I need a little help in understanding your business model that enables you to offer these discounts on behalf of a corporation. It sounds like you recruit physicians that have agreed to discount their charges. But say a little something about your business model that enables you to do this.

MS. SCHMIDT: Well, we're a smaller organization. We intend to have a very streamline administration with less overhead costs than a hospital or very large surgical center would have. We intend to hire staff that are mission-oriented, as we are, and have the same goals as we do for patients and keep our payroll down with that intention.

MS. FRIEDMAN: As you forecast how the facility will perform, you take into account the discounted care that you are going to provide, along with the commercially-insured patients.

MR. SEWELL: Related to that, on page 6, Table 2, these ambulatory surgery treatment centers within 30

minutes, so how many of those offer discounted care.

MS. SCHMIDT: Well, we feel that we can't even be compared to many of these facilities. We did our own study and had some staff call different facilities, and many of them don't take Medicaid. Many of them do not provide any discounted rates. Most of them don't, and those that do provide charity care don't really come right out and say they have charity care. They have to find a physician that is going to offer the charity care first, and the frustration that you see that some of our speakers had and the physicians themselves, who try calling around for patients, they're on the phone all day, making phone calls, trying to find a doctor that will take them and then a facility that also will take them. So, we're trying to cut those steps out so they can call one place and we can work with them.

MS. FRIEDMAN: One of the things to note about most of the existing surgery centers in the Chicago metropolitan area is that this Board never asked them whether they would accept Medicaid patients or charity care. I've become cognizant that that's part of what it takes to participate in the healthcare system, is that there needs to be a balance of the commercial patients and the charity care, and I've come up on this group of

individuals who is very much mission-oriented in that way. So you don't have an ability to monitor the charity care and Medicaid that surgery centers take that you do with most applicants.

MS. OLSON: I'm very confused. I really want to support this, but the numbers are really confusing me, and I've never been good at math, but on the Executive Summary, the sentence says, "The applicant does anticipate receiving a payor mix of 10.7 Medicare, 1.5 percent Medicaid, 3.4 percent public insurance, 74.4 percent private insurance, and 10 percent private pay." Now the number I heard today was 5 percent charity care and 55 percent discounted care which is 65 percent, but the other number says that 84 percent will be private pay and private insurance. I'm not -- the numbers aren't working for me, and I don't think that 1.5 percent Medicaid is a commitment to under served populations in any way, shape or form.

MS. SCHMIDT: The charity care is not listed here.

MS. OLSON: If it's 84 percent private insurance and private pay, how can -- that comes out to more than a hundred, even in my terrible month.

MS. FRIEDMAN: I think the person behind me is telling me that the number you're looking at is a revenue

percentage. I need to look closer to what you're looking at.

MS. OLSON: "The applicant does anticipate serving a payor mix of" -- and then it gives the percentages. It doesn't say anything there --

CHAIRMAN GALASSIE: Kathy, may I ask for Staff to respond to this?

MR. CONSTANTINO: We requested the payor mix from the applicant, and this was the numbers they provided to us. We accepted those numbers --

MS. OLSON: That's what I thought.

MR. CONSTANTINO: -- as true and correct.

MS. COOPER: The dollar amounts or the percentages that were provided were based upon revenue totals. So, with charity care, because you're not getting any revenue, they wouldn't be included in this number. It's kind of difficult because, obviously, you're not taking any money, you're not charging the patients for the services. So, therefore, there is no revenue attributed to it. The rest of it would be -- the actual money that they're actually going to be receiving is actually coming from this payor mix. That's actually money coming in the door.

MS. OLSON: So you're guaranteeing this

Board -- because I really want to go with this thing, but I feel like I'm not getting -- I feel like I'm getting sold a charity hospital that's going to be 84.4 percent not charity. I can't -- help me get that out of my head. It's not making sense to me.

MS. FRIEDMAN: Do you want to look at page 10 of the State Agency Report? So, if you look at the projections for services, they did it as Usual and Customary, Hardship, which would be the discounted charity care, and the total.

MS. OLSON: Are you looking at Table 5?

MS. FRIEDMAN: Yes.

MS. OLSON: So 5 percent of the total revenue will be charity, the bottom line?

MS. FRIEDMAN: Percentage compared to net revenue.

MS. OLSON: So only 5 percent?

MS. FRIEDMAN: But we didn't do a percentage here on the discounted, which is a significantly higher number.

MS. SCHMIDT: But we are looking at 55 percent of the patients to fall into the hardship category where they would get the highly discounted rate.

MS. OLSON: And that's in addition to 1.5

Medicaid?

MS. SCHMIDT: That's separate from Medicaid.

MS. OLSON: So, what actual percentage of Medicaid patients? I understand what you charge and what Medicaid pays you. What percentage of actual patients do you anticipate being Medicaid patients?

MS. SCHMIDT: 1.5.

MS. OLSON: So, one out of every hundred patients will be a Medicaid patient?

MS. SCHMIDT: Yes, and 55 percent are the patients that don't qualify for Medicare or Medicaid, that don't have insurance but can't afford the procedure.

MS. OLSON: So, 55 out of every hundred --

MS. SCHMIDT: Right, would get this high discounted rate.

CHAIRMAN GALASSIE: The 80 percent?

MS. SCHMIDT: The 80 percent.

CHAIRMAN GALASSIE: Both physician and facility?

MS. SCHMIDT: Correct.

CHAIRMAN GALASSIE: Dr. Burden.

MR. BURDEN: May I? I really am impressed with Ms. Olson's --

MS. OLSON: Bad math?

MR. BURDEN: No, good math. I have trouble understanding those numbers, too.

As a practicing physician, once the onset of Medicare occurred, it made a lot of doctors quite edgy, but it turned out to be a bonanza. However there is a pro forma fee profile attached to every specialist. I being a urologist, I had a fee profile that I had for thirty years. Many of the younger guys came on board, recognized that this fee limited the amount of money I would receive from the government for surgical procedures; i.e., prostatectomy. I have trouble understanding how you're going to get specialists that are going to either work for nothing, their fee profile is going to be impacted significantly, and if they are consistent with what I heard, I don't know how it's going to be financially feasible, other than volunteerism. The government is not a volunteer organization, as you well know. You have a fee profile attached to you. You have a patient that comes in that has cystostomy, bladder tumors discovered. There's certain number of costs involved or fee attached to both of those for both the facility and the doctor. They're in jeopardy in a way.

I can't figure out how you're going to -- I'm impressed with your attempt. That's one question. The

other question, I heard someone say we never interrogated ASTC applicants previously about charity care. But I did, and ended with a discussion a couple years ago with an orthopedist who wanted to open up an ambulatory treatment surgery center in Peoria. So we did. That's been my tenure on the Board. We've asked that question -- at least someone has, not necessarily me -- every time. But I agree when I hear you mention that this didn't occur prior to CON applications. I guess you're right, because I don't know. I haven't seen any data, but the failure to allow charity care to treat patients, indigent treatment in this ambulatory treatment center, is a real unfortunate thing, in my judgment. But that's the second question.

The first question is I don't know how you're going to work this. It sounds nice, but if you're asking me to come over and my fee profile is in jeopardy, I'll say I'll work for nix, I'll spend a day a week, and then I'll take care of them and we'll call it a freebie, until somebody sues me and says, "You missed a bladder tumor, baby, and I had to go out to Loyola, where I didn't have any money, but I did find it."

I see this having a lot of implication as a practitioner that I have some questions. Going to salary the doctors? That's a different story. You going to pick

up their malpractice premiums, which is horrendous in most cases.

You're talking about a multi-specialty clinic. I see urology is mentioned. I don't know the names of who you've recruited. Maybe you haven't recruited anybody yet. But how is that going to work?

MS. GOYAL: If I may answer this question for you, Doctor, just like yourself we -- myself included and many physicians included, we are in that phase of our life where we have practiced for many years and we have come across all kinds of patients who could not afford the services. Through my practice of 25 years, I probably have given -- my standard policy is never, ever to turn any patient to collection. It's been for the last twenty years. And we have partnered with the physicians who have active practices of their own who also want to give back to the community.

We have -- I, luckily, am part of a family which is two member only family. We have given to our children. We have done what's best for our family. But we're in that phase of our life where we want to give back to the community. I don't want to travel abroad. This community here, this is where I made my career, and this is where I want to give back. It is with that intention,

those intentions, many of the physicians we have partnered with, at least four physicians, who would stick to our policy of hardship criteria and would give those discounts. The center is being opened with intention of giving back to the community.

MR. BURDEN: I think that's noble. My own personal reaction to that would be that if we could get evidence subsequent to an application approval -- if it does get approved -- that you are doing such, you represent, shall we say, a step far above what I expect to hear from an ambulatory surgical treatment center application. Most of them are clearly applied for for the purposes of making economic rewards and they are, because there's two -- both a facility fee and a service fee. So, most of them do extremely well. Your approach would be so different that it would be my reaction -- I have trouble understanding how it's going to work. It sounds great. I would be impressed if you're able to do such, and I do agree, everybody on this Board, I presume, feels like you do, giving back is part of what we should be considering doing, but I'd like to see some proof of such to make me a little more content. I think it's a wonderful idea. I'm not objecting to what you're trying to do.

I looked at all of the alleged malpractice in

the State of Illinois for 25 years. Things happen and all of a sudden there's a problem. How we going to cover that? Who is going to pay for that aspect? The liability of running this institution is going to be substantial. To that degree, there is no charity care. That's what I'm getting to. Your business model -- I think we have alluded to it, but how is it going to work? I think it's great. That's me talking. I'd like to see some evidence that you can do this, practically speaking, and provide the care you so nobly wish to do.

CHAIRMAN GALASSIE: I would just like to remind the Board, if we so chose -- Member Sewell has a comment. Sorry.

MR. SEWELL: Let's assume we approve this. Is it possible for the local Public Health Department to send us an annual report on what actually happens with your operation with respect to the charity care?

MR. CARVALHO: They're going to do it.

CHAIRMAN GALASSIE: We could also require a condition that we would want a comment from the community health centers for their referral capability with this organization a year down the road.

MR. URSO: Or you can ask the applicant to provide this kind of information back to the Board.

MS. OLSON: That's really where I wanted to go but in the event that we request that, what resource is there -- I love this model, and I think if it works, I'll approve every one of them that comes to this Board.

So it's not working and they go back to mostly private insurance, what recourse do we have? I don't -- I am just at the point where I don't understand what recourse you would have.

MR. URSO: Well, you can specify conditions to the permit, that X number of cases are going to be charity cases, or however you want to express it. The applicants have an opportunity to agree with that, and they must agree to those conditions, and the Board can approve a permit in that regard.

CHAIRMAN GALASSIE: It's conditioned upon them meeting those numbers. They come back within a year from now, if they're not meeting those numbers, then it's contingent upon us to continue it or not.

MR. URSO: And there's consequences if someone doesn't fulfill the conditions of the permit in terms of compliance with the conditional permit.

MS. OLSON: Are you comfortable with that?

MS. GOYAL: Very much so.

MR. HAYES: For clarification, when we're

talking about charity care, they're actually talking about what, discounted patients? Is that correct?

MS. FRIEDMAN: We're talking about two things: One, pure, free care, and the other discounted.

MR. HAYES: Okay. Now, if you report charity care, do they report these discounted patients? Do they even have to talk about that?

CHAIRMAN GALASSIE: We would be -- we could be placing a condition on our approval that they come back a year from now to show us their statistics of did 55 percent of your population receive an 80 percent reduction? No, 51 percent did. Okay. If only 10 percent did, then clearly I think there's an issue. 1.5 percent received charity care. If they're close to the 1.5 percent --

MS. OLSON: Medicaid.

CHAIRMAN GALASSIE: Medicaid. Thank you.

MS. FRIEDMAN: And that would be a year from licensure, not from today's date.

CHAIRMAN GALASSIE: Thank you.

MR. HAYES: Normally, when this data is reported to the Department of Public Health, have they -- are they interested in that? Have they ever collected data like that?

CHAIRMAN GALASSIE: I'm sorry, John, I missed

the first half. I apologize.

MR. CARVALHO: Currently we collect information that talks about the revenues, and we do collect the charity care. We don't have something other than implicitly. In other words, if you showed the revenues are a lot lower than one would expect given the volume, that would tell you implicitly that there was discounted care. You can make whatever condition you fashion on this that works for the Board and the applicant. You could require some additional details supplementing the normal report.

Could I ask a few questions that will help clarify what that condition should be? Would now be a good time for that?

CHAIRMAN GALASSIE: Ask a question.

MR. CARVALHO: Yes, and maybe some context, because I think some of you who have been on the Board know this, but others may know about it. But just to clarify, Illinois imposes no obligation on an ASTC to provide any charity care, and as the applicant said, the average in this state is .03 percent. That's not three percent, that's .03 percent. I mean, that's an accident. That's statistically zero. Although there's an obligation on hospitals for charity care, it's not measured -- what I

mean, there's not a numerical requirement, and most hospitals fulfill it by persons who come to the emergency room who are indigent and they waive the fee, but they had to see those persons who came to the emergency room, because EMTALA says they have to see those persons.

So, the referral of somebody who needs a colonoscopy or something like that, it's totally in the discretion of the hospital whether to grant it, and I'm not familiar with a vast amount of that kind of care being done. Most of the emergency -- most of the charity care is done through what comes through the emergency room, and nobody comes in with an emergency, every-five-year colonoscopy. That's not an emergency. That's just something that's good, primary and preventative care.

So, when you intercept that state of the law, naming no obligation for charity care, with your Board's charge, which is to say we only let the number of operating rooms that are required under a Certificate of Need analysis be built and no more, you create a real bad situation that this Board has struggled with for years, as Dr. Burden has alluded to. Namely, let's say that there is a need for ten operating rooms in and area and ten ASTC's at those ten operating rooms, and none of them provide charity care. Basically, nobody in that area is going to

get charity care and nobody can come in and ask to build another one, even if they promise that they're going to do charity care, because all of the other ones can complain, saying that the need hasn't been met -- there isn't a need, there's only a need for ten, and you've got ten, so they don't meet the need.

So you're presented with this unusual situation where, as Dr. Burden alluded, we've had applicants come in and show they're clearing a million-seven a year profit on the surgery centers. These are money printing machines. So, if someone comes in and says, "I'm styling a business model where I'm only going to clear a third of that, but that's enough for me, because I'm at that stage in any career where I don't need the million 7," you still run into the problem that it's -- the need isn't ten -- you know, this is where -- this is why you hear us say this all the time.

CHAIRMAN GALASSIE: We're approaching the lunch hour.

MR. CARVALHO: So, I'm saying -- Frank says this to you all the time, why you have discretion, why this isn't an automatic process, why there isn't just a computer that plugs the numbers in and it comes out yes and no. So, the key question, it seems to me, for you is that if their

story is persuasive about what they want to do, how do you memorialize that commitment? How do you put in that commitment that gives you the reason why you want to exercise your discretion, gives you an expectation that the commitment will be met? It's a little awkward doing it ad hoc, on the spot, in a way.

So, the question I had is how have you memorialized this commitment? Because then the Board can kind of latch on to that, because one of the things Dr. Burden alluded to as well, an ASTC can come here and say, "We're going to give everybody charity care that qualifies", but if no doctors bring the patients there they can make that commitment without any adverse effect to their bottom line -- because a surgery center doesn't do operations, the brick and mortar doesn't do the operations, doctors do. And if the doctors don't bring charity care to the center, there is no charity care done. You've had applicants come in and say, "We promise we'll give everybody that comes in X percent of poverty charity care," but absent that physician commitment, that promise isn't very useful.

So, how have you memorialized the commitment of doctors to do this, because if you've memorialized it and this Board can latch on to it as a condition, that may

be persuasive to some Board members.

DR. GOYAL: I think I'm not understanding the word "memorialized".

MR. CARVALHO: Well, you said that doctors have made a commitment to provide this charity care and to provide it at a discounted bases and to bring patients. Somehow they have to come across these patients, but assuming their practice brings these patients to them, have they signed an agreement with you or are they the owners and so it's the four owners and they've all agreed to this? "Memorialize" is a lawyer's word, but how is it written down?

MS. SCHMIDT: As Dr. Goyal mentioned before, these physicians have their own practices, successful practices, independent contracts in some cases, and many of our referring physicians, these are the ones that said, "You know, I have patients who I need to take them somewhere. I would like to provide them some kind of either charity care or I can discount my fee, but it doesn't help if I discount my fee and the facility doesn't". So, that's where our numbers are coming from, the physicians that we have worked with, the ones that are going to be referring their patients to us, and any newcoming physicians that come in, something to discuss

with them at that time.

MS. FRIEDMAN: I guess I would suggest that if we turn to what the conditions of the permit would be, in this scenario it would be contemplating coming back here a year after licensure, 15 months after we compiled the data, to talk about it, and if we look at the page 10 and the chart, you know, we don't know for sure that that first number is going to be 1,685 cases, but the intent is that the payer mix is substantially the same as this, and maybe there's more charity and less hardship or maybe the volumes weren't exactly what we thought they would be in the total, but it's substantially similar to what we anticipated.

MS. OLSON: I think that's all we're asking.

MS. FRIEDMAN: And then patients probably wouldn't come there -- I mean, if we have a problem with physicians referring and taking the discounted care, then the patients won't be there in the numbers.

MR. URSO: So are you saying there's going to be a discount not only in the physician fees but also the facility fees?

DR. GOYAL: Correct. It works both ways. For the physician it works very well, because physicians are faced every day with a patient who are not able to pay for the services. So, if they find a place who is going to

give that hardship discount, that their patients can get the colonoscopy for $600, the doctor is more than willing to give that discount for their services. So, not only it works for the facility, it works for the physician, too.

CHAIRMAN GALASSIE: I'm hearing the Board suggest to you that we would like to have you come back to us 12 months from now to share the statistics of what your population has actually been.

MR. SEWELL: I think she specified 12 months from license.

CHAIRMAN GALASSIE: Correct.

MS. FRIEDMAN: Might we suggest a couple months after that so we can submit the data?

CHAIRMAN GALASSIE: Fifteen months from licensure?

MS. FRIEDMAN: Yes.

CHAIRMAN GALASSIE: I would entertain a motion to approve Project 11-002, to establish a multi-specialty ambulatory surgical treatment center in Des Plaines at a cost of $2,536,751, with the condition that the applicant return to the Board fifteen months following licensure to determine the compliance statistics.

MR. BURDEN: So moved.

MS. OLSON: I'll second.

CHAIRMAN GALASSIE: Motion and second.

MR. ROATE: Motion made by Dr. Burden, seconded by Ms. Olson.

Dr. Burden?

MR. BURDEN: I'm going to vote yes, and I trust that when you come back, it will look -- which we hope it will, that this will be a first.

MR. ROATE: Mr. Eaker?

MR. EAKER: Yes. I want to commend you on the direction that you're headed and invite you to establish a facility in Champaign County, if you'd like to do so. I vote yes.

MR. ROATE: Justice Greiman?

MR. GREIMAN: Yes. I notice this is in Des Plaines. They just opened a gambling casino there.

MR. SCHMIDT: It's right down the street.

MR. GREIMAN: Des Plaines will be desperate. I vote aye.

MR. ROATE: Mr. Hayes?

MR. HAYES: I'm going to vote no, because I feel that the competition to hospitals and other ASTC's for an unproven model, and I'm going to vote no because of that.

MR. ROATE: Mr. Hilgenbrink?

MR. HILGENBRINK: Yes.

MR. ROATE: Ms. Olson?

MS. OLSON: I vote yes and wish you all the luck in the world.

MR. ROATE: Mr. Sewell?

MR. SEWELL: I vote yes.

MR. ROATE: Chairman Galassie?

CHAIRMAN GALASSIE: Chair votes yes.

MR. ROATE: That's seven votes in the positive, one vote in the negative.

CHAIRMAN GALASSIE: Motion passes. Congratulations.

Our next item is 11-009. However, we will be breaking for lunch. It's five to 1:00. We're going to try to bring it back in this room at 1:30, which is a quick lunch for Board members, and we'll get the air turned back on and cool things down a little bit.

(Lunch recess)

CHAIRMAN GALASSIE: We have a quorum. We will come back to order. Appreciate everybody being relatively timely.

We are moving into our agenda item 11-009 Sedgebrook Health Center. We have no public comments requested. Seeing none, I would ask for the

attachment #2

TABLE FOUR Clinic and Non clinical GSF		
Department/Area	Cost	Proposed
Laboratory	$44,303	98
Radiology	57,866	128
Recovery	421,334	932
Operating Room	1,303,786	2,884
Exam Rooms	285,259	631
Waiting Room	424,203	1,180
Total	**$2,536,751**	**5,853**

VII. Project Purpose, Background and Alternatives – Information Requirements

A. Criterion 1110.230(a) - Background of Applicant

The criterion:

"An applicant must demonstrate that it is fit, willing and able, and *has the qualifications, background and character, to adequately provide a proper standard of health care service for the community.* [20 ILCS 3960/6] In evaluating the qualifications, background and character of the applicant, HFPB shall consider whether adverse action has been taken against the applicant, or against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application. A health care facility is considered "owned or operated" by every person or entity that owns, directly or indirectly, an ownership interest. If any person or entity owns any option to acquire stock, the stock shall be considered to be owned by such person or entity (refer to 77 Ill. Adm. Code 1100 and 1130 for definitions of terms such as "adverse action", "ownership interest" and "principal shareholder")."

The applicant provided licensure and certification information as required, and noted that Apollo Health Center Ltd. was organized in December, 2009. The applicant also noted that it does not own or have ownership interest in any other health care facility, and the State Agency can access any and all information to determine whether adverse actions have been taken against the applicant. The applicant provided all the necessary information required to address this criterion.

Safety Net Impact Statement

Attachment #3

STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 •(217) 782-3516 FAX: (217) 785-4111

EXECUTIVE SUMMARY

PROJECT DESCRIPTION:

- The applicant (Apollo Health Center, Ltd.) proposes to establish a multi-specialty Ambulatory Surgery Treatment Center (ASTC). The estimated cost of the project is $2,536,751. **The anticipated completion date is July 31, 2012.**

WHY THE PROJECT IS BEFORE THE STATE BOARD:

- The applicant is before the State Board because it is proposing the establishment of a health care facility as defined by the Illinois Health Facilities Planning Act.

PURPOSE OF THE PROJECT:

- The purpose of the project is to expand gastroenterology, OB/GYN and urology services in the geographic service area. The geographic service area encompasses parts of Cook, Dupage, Kane, and Lake Counties.

BACKGROUND/COMPLIANCE ISSUES:

- None

PUBLIC HEARING/COMMENT:

- No public hearing was requested and both letters of opposition and support were received by the State Agency. Those in support stated that a facility that will provide discounted rates and flexible hours and is multilingual is needed in the Des Plaines area. Those in opposition stated the proposed facility is not needed because of the number of underutilized facilities in the geographic service area.

FINANCIAL AND ECONOMIC FEASIBILITY:

- The entirety of the project will be funded through Cash & Securities and the fair market value of leased space.

CHARITY CARE:

- The applicant notes historical charity care data is unavailable because the applicant does not operate any other health care facility regulated by the State Board. The applicant does anticipate serving a payor mix of 10.7% Medicare, 1.5% Medicaid, 3.4% Public Insurance, 74.4% Private Insurance, 10.0% Private Pay upon project completion.

CONCLUSIONS:

- There are existing facilities within the geographic service area that are operating at less than 80% occupancy; therefore it appears the proposed facility will have a negative impact on other area facilities within the geographic service area.

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14	0	0	0
15-44	0	643	643
45-64	0	3	3
65-74	0	0	0
75+ Yea	0	0	0
TOTAL	0	646	646

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	0	236	236
Private Pay	0	407	407
Charity Care	0	3	3
TOTAL	0	646	646

NET REVENUE BY PAYOR SOURCE for Fiscal Year

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	74.2%	25.8%	100.0%		2%
0	0	0	476,903	165,964	642,867	11,489	

OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	0	0.00	0.00	0.00	0.00
General	0	0.00	0.00	0.00	0.00
Laser Eye	0	0.00	0.00	0.00	0.00
Neurology	0	0.00	0.00	0.00	0.00
OB/Gynecology	646	484.50	646.00	1130.50	1.75
Ophthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	0	0.00	0.00	0.00	0.00
TOTAL	646	484.50	646.00	1130.50	1.75

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheteriza	0	0	0	0	0	0.00
Gastro-Intestinal	0	0	0	0	0	0.00
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	0	0	0	0	0	0.00

Source:Ambulatory Surgical Treatment Center Questionnaire for 2007, Illinois Department of Public Health, Health System

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14	0	0	0
15-44	0	436	436
45-64	0	0	0
65-74	0	0	0
75+ Yea	0	0	0
TOTAL	0	436	436

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	0	182	182
Private Pay	0	250	250
Charity Care	0	4	4
TOTAL	0	436	436

NET REVENUE BY PAYOR SOURCE for Fiscal Year

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	74.2%	25.8%	100.0%		2%
0	0	0	294,335	102,430	396,765	7,235	

OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	0	0.00	0.00	0.00	0.00
General	0	0.00	0.00	0.00	0.00
Laser Eye	0	0.00	0.00	0.00	0.00
Neurology	0	0.00	0.00	0.00	0.00
OB/Gynecology	436	327.00	436.00	763.00	1.75
Ophthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	0	0.00	0.00	0.00	0.00
TOTAL	436	327.00	436.00	763.00	1.75

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheteriza	0	0	0	0	0	0.00
Gastro-Intestinal	0	0	0	0	0	0.00
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	0	0	0	0	0	0.00

Source:Ambulatory Surgical Treatment Center Questionnaire for 2008, Illinois Department of Public Health, Health Systems Development

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14	0	0	0
15-44	0	350	350
45-64	0	2	2
65-74	0	0	0
75+ Yea	0	0	0
TOTAL	0	352	352

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	0	64	64
Private Pay	0	280	280
Charity Care	0	8	8
TOTAL	0	352	352

NET REVENUE BY PAYOR SOURCE for Fiscal Year

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	74.2%	25.8%	100.0%		2%
0	0	0	272,864	94,957	367,821	6,708	

OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	0	0.00	0.00	0.00	0.00
General	0	0.00	0.00	0.00	0.00
Laser Eye	0	0.00	0.00	0.00	0.00
Neurological	0	0.00	0.00	0.00	0.00
OB/Gynecology	352	264.00	352.00	616.00	1.75
Opthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	0	0.00	0.00	0.00	0.00
TOTAL	352	264.00	352.00	616.00	1.75

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheteriza	0	0	0	0	0	0.00
Gastro-Intestinal	0	0	0	0	0	0.00
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	0	0	0	0	0	0.00

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14	0	2	2
15-44	0	336	336
45-64	0	1	1
65-74	0	0	0
75+ Yea	0	0	0
TOTAL	0	339	339

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	0	112	112
Private Pay	0	225	225
Charity Care	0	2	2
TOTAL	0	339	339

NET REVENUE BY PAYOR SOURCE FOR FISCAL YEAR

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	74.2%	25.8%	100.0%		4%
0	0	0	213,178	74,187	287,365	10,765	

OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	0	0.00	0.00	0.00	0.00
General	0	0.00	0.00	0.00	0.00
Laser Eye Surgery	0	0.00	0.00	0.00	0.00
Neurology	0	0.00	0.00	0.00	0.00
OB/Gynecology	339	254.25	339.00	593.25	1.75
Opthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic Surgery	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	0	0.00	0.00	0.00	0.00
TOTAL	339	254.25	339.00	593.25	1.75

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheteriza	0	0	0	0	0	0.00
Gastro-Intestinal	0	0	0	0	0	0.00
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	0	0	0	0	0	0.00

Source:Ambulatory Surgical Treatment Center Questionnaire for 2010, Illinois Department of Public Health, Health Systems Development

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14	0	1	1
15-44	0	335	335
45-64	0	2	2
65-74	0	0	0
75+ Yea	0	0	0
TOTAL	0	338	338

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	0	115	115
Private Pay	0	221	221
Charity Care	0	2	2
TOTAL	0	338	338

NET REVENUE BY PAYOR SOURCE FOR FISCAL YEAR

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	74.2%	25.8%	100.0%		3%
0	0	0	275,097	95,734	370,831	9,356	

OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	0	0.00	0.00	0.00	0.00
General	0	0.00	0.00	0.00	0.00
Laser Eye Surgery	0	0.00	0.00	0.00	0.00
Neurological	0	0.00	0.00	0.00	0.00
OB/Gynecology	338	253.50	338.00	591.50	1.75
Ophthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic Surgery	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	0	0.00	0.00	0.00	0.00
TOTAL	338	253.50	338.00	591.50	1.75

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheteriza	0	0	0	0	0	0.00
Gastro-Intestinal	0	0	0	0	0	0.00
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	0	0	0	0	0	0.00

Reference Numbers Facility Id 7002140
Health Service Area 007 Planning Service Area 043

ADVANTAGE HEALTH CARE, LTD.
203 E. IRVING PARK ROAD
WOOD DALE, IL 60191

Administrator
Aimee Dillard

Date Complete
2/26/2013

Registered Agent
Joseph Horowitz

Property Owner
Arizona-Illinois, LP

Legal Owner(s)

Advantage Health Care. Ltd

Number of Operating Rooms	2
Procedure Rooms	0
Exam Rooms	1
Number of Recovery Stations Stage 1	8
Number of Recovery Stations Stage 2	0

Type of Ownership
Corporation (RA required)

HOSPITAL TRANSFER RELATIONSHIPS

HOSPITAL NAME	NUMBER OF PATIENTS
Northwest Community Hospital, Arlington Hts Il	0
Lutheran General Hospital, Park Ridge Il	0
	0
	0
	0

STAFFING PATTERNS

PERSONNEL	FULL-TIME EQUIVALENTS
Administrator	1.00
Physicians	1.00
Nurse Anesthetists	0.00
Director of Nurses	1.00
Registered Nurses	1.00
Certified Aides	0.00
Other Health Profs.	5.00
Other Non-Health Profs	3.00
TOTAL	12.00

DAYS AND HOURS OF OPERATION

Monday	0
Tuesday	8
Wednesday	9
Thursday	0
Friday	10
Saturday	0
Sunday	0

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14 years	0	1	1
15-44 years	0	391	391
45-64 years	0	6	6
65-74 years	0	0	0
75+ years	0	0	0
TOTAL	0	398	398

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	0	139	139
Private Pay	0	258	258
Charity Care	0	1	1
TOTAL	0	398	398

NET REVENUE BY PAYOR SOURCE FOR FISCAL YEAR

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	74.9%	25.1%	100.0%		
0	0	0	332,488	111,714	444,202	4,678	1%

Reference Numbers Facility Id 7002140
Health Service Area 007 Planning Service Area 043
Advantage Health Care, Ltd.
203 E. Irving Park Road
Wood Dale, IL 60191

Administrator
Aimee Dillard

Date Complete
3/3/2014

Contact Person
Vera Schmidt

Telephone
847-255-7400

Registered Agent
Josph Horowitz

Property Owner
Arizona-Illionois, LP

Legal Owner(s)
Advantage Health Care, Ltd

Number of Operating Rooms	2
Procedure Rooms	0
Exam Rooms	1
Number of Recovery Stations Stage 1	0
Number of Recovery Stations Stage 2	0

Type of Ownership
Corporation (RA required)

HOSPITAL TRANSFER RELATIONSHIPS

HOSPITAL NAME	NUMBER OF PATIENTS
Lutheran General Hospital, Park Ridge Il	0
	0
	0
	0
	0

STAFFING PATTERNS

PERSONNEL	FULL-TIME EQUIVALENTS
Administrator	1.00
Physicians	1.00
Nurse Anesthetists	0.00
Director of Nurses	1.00
Registered Nurses	1.00
Certified Aides	0.00
Other Health Profs.	5.00
Other Non-Health Profs	3.00
TOTAL	12.00

DAYS AND HOURS OF OPERATION

Monday	0
Tuesday	0
Wednesday	8
Thursday	0
Friday	10
Saturday	0
Sunday	0

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14 years	0	0	0
15-44 years	1	607	608
45-64 years	0	4	4
65-74 years	0	0	0
75+ years	0	0	0
TOTAL	1	611	612

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	1	202	203
Private Pay	0	407	407
Charity Care	0	2	2
TOTAL	1	611	612

NET REVENUE BY PAYOR SOURCE FOR FISCAL YEAR

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	74.2%	25.8%	100.0%		
0	0	0	466,065	162,191	628,256	9,024	1%

Source:Ambulatory Surgical Treatment Center Questionnaire for 2013, Illinois Department of Public Health, Health Systems Development

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14	0	2	2
15-44	64	2,671	2,735
45-64	10	21	31
65-74	0	0	0
75+ Yea	0	0	0
TOTAL	74	2,694	2,768

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	61	1,954	2,015
Private Pay	13	698	711
Charity Care	0	42	42
TOTAL	74	2,694	2,768

NET REVENUE BY PAYOR SOURCE for Fiscal Year

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	76.8%	23.2%	100.0%		2%
0	0	0	1,826,810	550,796	2,377,606	39,203	

OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	3	2.25	3.00	5.25	1.75
General	0	0.00	0.00	0.00	0.00
Laser Eye	0	0.00	0.00	0.00	0.00
Neurology	0	0.00	0.00	0.00	0.00
OB/Gynecology	2687	2,015.25	2,687.00	4702.25	1.75
Ophthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	78	58.50	78.00	136.50	1.75
TOTAL	2768	2,076.00	2,768.00	4844.00	1.75

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheteriza	0	0	0	0	0	0.00
Gastro-Intestinal	0	0	0	0	0	0.00
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	0	0	0	0	0	0.00

Source:Ambulatory Surgical Treatment Center Questionnaire for 2007, Illinois Department of Public Health, Health System

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14	0	3	3
15-44	63	2,385	2,448
45-64	3	10	13
65-74	0	0	0
75+ Yea	0	0	0
TOTAL	66	2,398	2,464

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	54	1,724	1,778
Private Pay	12	635	647
Charity Care	0	39	39
TOTAL	66	2,398	2,464

NET REVENUE BY PAYOR SOURCE for Fiscal Year

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	76.8%	23.2%	100.0%		1%
0	0	0	1,857,153	559,944	2,417,097	34,513	

OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	4	3.00	4.00	7.00	1.75
General	0	0.00	0.00	0.00	0.00
Laser Eye	0	0.00	0.00	0.00	0.00
Neurology	0	0.00	0.00	0.00	0.00
OB/Gynecology	2396	1,797.00	2,396.00	4193.00	1.75
Ophthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	64	48.00	64.00	112.00	1.75
TOTAL	2464	1,848.00	2,464.00	4312.00	1.75

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheteriza	0	0	0	0	0	0.00
Gastro-Intestinal	0	0	0	0	0	0.00
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	0	0	0	0	0	0.00

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14	0	1	1
15-44	48	1,980	2,028
45-64	12	15	27
65-74	0	0	0
75+ Yea	0	0	0
TOTAL	60	1,996	2,056

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	60	622	682
Private Pay	0	1,332	1,332
Charity Care	0	42	42
TOTAL	60	1,996	2,056

NET REVENUE BY PAYOR SOURCE for Fiscal Year

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	76.8%	23.2%	100.0%		2%
0	0	0	1,386,518	418,048	1,804,566	30,675	

OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	0	0.00	0.00	0.00	0.00
General	0	0.00	0.00	0.00	0.00
Laser Eye	0	0.00	0.00	0.00	0.00
Neurological	0	0.00	0.00	0.00	0.00
OB/Gynecology	1996	1,497.00	1,996.00	3493.00	1.75
Opthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	60	34.00	60.00	94.00	1.57
TOTAL	2056	1,531.00	2,056.00	3587.00	1.74

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheteriza	0	0	0	0	0	0.00
Gastro-Intestinal	0	0	0	0	0	0.00
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	0	0	0	0	0	0.00

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14	0	2	2
15-44	59	1,681	1,740
45-64	7	16	23
65-74	0	0	0
75+ Yea	0	0	0
TOTAL	66	1,699	1,765

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	66	708	774
Private Pay	0	976	976
Charity Care	0	15	15
TOTAL	66	1,699	1,765

NET REVENUE BY PAYOR SOURCE FOR FISCAL YEAR

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	76.8%	23.2%	100.0%		3%
0	0	0	1,129,554	340,569	1,470,123	44,584	

OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	0	0.00	0.00	0.00	0.00
General	0	0.00	0.00	0.00	0.00
Laser Eye Surgery	0	0.00	0.00	0.00	0.00
Neurology	0	0.00	0.00	0.00	0.00
OB/Gynecology	1699	1,274.25	1,699.00	2973.25	1.75
Opthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic Surgery	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	66	40.00	66.00	106.00	1.61
TOTAL	1765	1,314.25	1,765.00	3079.25	1.74

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheteriza	0	0	0	0	0	0.00
Gastro-Intestinal	0	0	0	0	0	0.00
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	0	0	0	0	0	0.00

Source:Ambulatory Surgical Treatment Center Questionnaire for 2010, Illinois Department of Public Health, Health Systems Development

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14	0	0	0
15-44	46	1,011	1,057
45-64	7	7	14
65-74	0	0	0
75+ Yea	0	0	0
TOTAL	53	1,018	1,071

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	0	0	0
Medicare	0	0	0
Other Public	0	0	0
Insurance	52	401	453
Private Pay	0	601	601
Charity Care	1	16	17
TOTAL	53	1,018	1,071

NET REVENUE BY PAYOR SOURCE FOR FISCAL YEAR

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
0.0%	0.0%	0.0%	76.8%	23.2%	100.0%		3%
0	0	0	952,975	287,329	1,240,304	38,001	

OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	0	0.00	0.00	0.00	0.00
General	0	0.00	0.00	0.00	0.00
Laser Eye Surgery	0	0.00	0.00	0.00	0.00
Neurological	0	0.00	0.00	0.00	0.00
OB/Gynecology	1018	763.50	1,018.00	1781.50	1.75
Ophthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic Surgery	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	53	39.75	53.00	92.75	1.75
TOTAL	1071	803.25	1,071.00	1874.25	1.75

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP and CLEAN-UP TIME (HOURS)	TOTAL SURGERY (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheteriza	0	0	0	0	0	0.00
Gastro-Intestinal	0	0	0	0	0	0.00
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	0	0	0	0	0	0.00

Source:Ambulatory Surgical Treatment Center Questionnaire for 2011, Illinois Department of Public Health, Health Systems Development

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JESSE WHITE
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CORPORATION FILE DETAIL REPORT

Entity Name	ADVANTAGE HEALTHCARE, LTD.	**File Number**	59115243
Status	ACTIVE		
Entity Type	CORPORATION	**Type of Corp**	DOMESTIC BCA
Incorporation Date (Domestic)	11/12/1996	**State**	ILLINOIS
Agent Name	STATE REGISTRY LTD	**Agent Change Date**	11/06/2013
Agent Street Address	3 GOLF CENTER RD 356	**President Name & Address**	VIJAY GOYAL 3 GOLF CENTER RD #356 HOFFMAN ESTATES IL 60169
Agent City	HOFFMAN ESTATES	**Secretary Name & Address**	VINOD GOYAL SAME
Agent Zip	60169	**Duration Date**	PERPETUAL
Annual Report Filing Date	10/10/2014	**For Year**	2014

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CORPORATION FILE DETAIL REPORT

Entity Name	DIMENSIONS HEALTH SYSTEMS, LTD.	**File Number**	54402813
Status	ACTIVE		
Entity Type	CORPORATION	**Type of Corp**	DOMESTIC BCA
Incorporation Date (Domestic)	10/07/1986	**State**	ILLINOIS
Agent Name	LP AGENTS LLC	**Agent Change Date**	10/17/2013
Agent Street Address	2 NORTH LASALLE ST STE 1300	**President Name & Address**	VIJAY GOYAL 3 GOLF CENTER RD #356 HOFFMAN ESTATES IL 60169
Agent City	CHICAGO	**Secretary Name & Address**	VINOD GOYAL SAME
Agent Zip	60602	**Duration Date**	PERPETUAL
Annual Report Filing Date	10/06/2014	**For Year**	2014

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Attachment #4

A.H. Employee Company, Ltd., Vijay L. Goyal v. Fifth Third Bank and Michael Kozak

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

March 1, 2012

A.H. EMPLOYEE COMPANY, LTD., VIJAY L. GOYAL, M.D., VINOD K. GOYAL, M.D., AANCHOR HEALTH CENTER, LTD., ACCESS HEALTH CENTER, LTD., ACE HEALTH CENTER, LTD. A C U HEALTH CENTER, ADVANTAGE HEALTHCARE, LTD, AFFILIATED HEALTH GROUP, LTD., AH LASER AESTHETICS, LTD., AMERICAN HEALTH CENTER, LTD., CENTER FOR FAMILY HEALTH CARE S.C., FORESTVIEW MEDICAL CENTER, MICHIGAN AVENUE CENTER FOR HEALTH, LTD; SOUTHWEST PACIFIC LP, FOREST VIEW RIVER LP, ARKANSAS-ILLINOIS LP, ALABAMA-ILLINOIS LP, ATLANTA- ILLINOIS LP, ARIZONA-ILLINOIS LP, KANSAS-ILLINOIS LP, LAKE JEFFERSON LP, 1640 NORTH PARTNERSHIP LP, SOUTHWEST CERMAK LP, AND AA REALTY MANAGEMENT, LTD PLAINTIFFS,
v.
FIFTH THIRD BANK AND MICHAEL KOZAK, INDIVIDUALLY DEFENDANTS.

The opinion of the court was delivered by: James F. Holderman, Chief Judge

MEMORANDUM OPINION AND ORDER

Vijay and Vinod Goyal (collectively, "the Goyals"), who are both physicians and owners of various businesses, filed this lawsuit after their long-standing lending relationship with Fifth Third Bank ("Fifth Third") soured. The Goyals and their business entities contend that Fifth Third and loan officer Michael Kozak (collectively, "Defendants") forced a technical default on one of their loans because of their Indian ancestry and the fact that certain of their businesses perform abortions. In their 10-count amended complaint, the Goyals and their various businesses seek to recover for: (1) discrimination and retaliation under 42 U.S.C. § 1981 (Count I); (2) discrimination and retaliation under the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691(a)(1-3) (Count II); (3) a failure to provide a statement explaining the revocation of credit, as required by the ECOA, 15 U.S.C. § 1691(d) (Count III); (4) violation of the Illinois Fairness in Lending Act ("IFLA"), 815 ILCS 120/3 (Count IV); (5) breach of the revolving note for Plaintiff A.H. Employee Company Ltd. ("A.H. Note") (Count V); (6) breach of contract based on the defaults that were triggered by the default

of the A.H. Note (Count VI); (7) promissory estoppel (Count VII); (8) intentional misrepresentation (Count VIII); (9) negligent misrepresentation (Count IX); and (10) a violation of the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (Count X). (Dkt. No. 24, Ex. A. (First Am. Compl.).)

Before the court is Defendants' "Motion to Dismiss Plaintiffs' First Amended Complaint Pursuant to Rules 12(b)(1) and 12(b)(6)." (Dkt. No. 27 (Defs.' Mot.).) For the reasons stated herein, the motion is granted in part and denied in part.

BACKGROUND

The following facts are taken from Plaintiffs' First Amended Complaint and are accepted as true for the purposes of this motion. Vijay Goyal was born in India; Vinod Goyal in Nepal.*fn1

(First Am. Compl. ¶ 4.) Both are of the Hindu religion and are United States citizens. (Id.) Among the variety of businesses he Goyals own are Aanchor Health Center, Ltd., Access Health Center, AA Realty Management, Ltd., A C U Health Center, Ltd., Advantage HealthCare Ltd., Affiliated Health Group, Ltd., American Health Center, Ltd., Center for Family Health Care, S.C., Forestview Medical Center, Ltd., and Michigan Avenue Center for Health, Ltd. (First Am. Compl. ¶ 5). Michigan Avenue Center for Health is a surgical center that offers gynecological care. (Id.) The Goyals also own several limited partnerships: Southwest Pacific LP, Forestview River LP, Arkansas-Illinois LP, Alabama-Illinois LP, Atlanta-Illinois LP, Kansas-Illinois LP, Lake Jefferson LP, and Southwest Cermak LP. (Id. ¶ 6.) Where appropriate, the Goyal-owned businesses will be referred to collectively as the "Goyal entities."

Fifth Third Bank is incorporated in Ohio and headquartered in Tennessee. It operates throughout the Chicago area. (Id. ¶ 7.) Michael Kozak is a vice president at Fifth Third. (Id. ¶ 8.) The Goyals and their businesses had a long-standing relationship with Fifth Third. (Id. ¶ 9.) Beginning in 2003, the Goyal entities borrowed an aggregate of more than $9 million, and never made a late payment to Fifth Third. (Id. ¶ 9.) The Goyal entities had several loans with Fifth Third, including loans to: (1) Southwest Pacific LP with a principal of $557,949.13; (2) Forestview River LP with a principal of $977,701.28; (3) Arkansas-Illinois LP with a principal of 720,000; (4) Alabama-Illinois LP with a principal of $800,000; (5) Atlanta-Illinois LP with a principal of $800,000; (5) Arizona-Illinois LP with a principal of $800,000; (6) Kansas-Illinois LP with a principal of $672,000; (7) Lake Jefferson LP with a principal of $2,046,535; (8) Southwest Cermak LP with a principal of $560,000; (9) 1640 North Partnership LP with a principal of $953,608; (9) American Health Center Ltd. with a principal of $300,000; (10) American Health Center Ltd. with a principal of $100,000; and (11) A.H. Employee Company Ltd. with a principal of $750,000. (Id. ¶ 10.)

The revolving note for the A.H. Employee Company ("A.H. Note") is at the center of this dispute. It was issued on March 17, 2008, and was secured by guaranties executed by the Goyals and the following Goyal entities: (1) Affiliated Health Group, Ltd.; (2) American Health Center, Ltd.; (3) Access Health Center, Ltd.; (4) Center for Family Health Care, S.C.; (5) A C U Health Center, Ltd.; (6) Aanchor Health Center, Ltd.; (7) AA Realty Management, Ltd.; (8) Michigan Avenue Center for Health, Ltd.; (9) Advantage Health Care, Ltd.; and (10) Forestview Medical Center, Ltd. (Id. ¶¶ 11--12.) Fifth Third also demanded that certain of the Goyal entities execute security agreements pledging their assets as collateral, including: (1) Affiliated Health Group, Ltd.; (2) American Health Center, Ltd.; (3) Access Health Center, Ltd.; (4) A C U Health Center, Ltd.; (5) Aanchor Health Center, Ltd., and (6) Michigan Avenue Center for Health, Ltd. (Id. ¶ 13.)

By its terms, the A.H. Note was to automatically renew for a period of one year on the anniversary date of the note, subject to certain conditions. (Id. ¶ 14 , see Dkt. No. 1, Ex. A.)*fn2 On both March 17, 2009, and March 17, 2010, the A.H. Note was automatically renewed. (Id. ¶ 15.) In early 2008, the A.H. Note, and the rest of the Goyal entities' loan portfolio, was transferred to a new loan officer, Kozak. (Id. ¶ 16.) The Goyals had a good relationship with their previous loan officer, Gashi Khadivi. (Id.)

In the spring of 2010, certain Fifth Third personnel, including Kozak, met to discuss the Goyal entities' loan portfolio. (Id. ¶ 17.) Kozak and the other bank officials discussed the Goyals "and issues that related to their personal characteristics, including, without limitation, their religion." (Id.) They also discussed the fact that certain of the Goyal entities performed lawful abortions and expressed their personal religious views that Fifth Third should not lend money to the Goyals as a result of this. (Id.)

Following this meeting, Defendants began to take discriminatory actions towards the Plaintiffs in an effort to undermine Fifth Third's banking relationship with them. (Id. ¶ 18.) This included efforts to force the A.H. Note into a technical default in an effort to force the other cross-collateralized loans in the Goyal entities' loan portfolio into default. (Id.) After the spring 2010 meeting, Fifth Third began to make increasingly burdensome demands for documentation from A.H. Employee Company even though such requests had not been made previously and even though the Goyal entities' financial situation had not changed. (Id. ¶ 19.)

Beginning in August or September 2010, Fifth Third, primarily through Kozak, made false statements as well as confusing and contradictory demands. (Id. ¶ 20.) When Plaintiffs complied with the demands, Defendants made new demands that were increasingly costly and time-consuming. (Id.) On or about Sept. 27, 2010, Vijay Goyal wrote a letter to Kozak complaining about the change in requirements and saying that the Goyals felt they were being discriminated against. (Id. ¶ 21.) He subsequently requested that Kozak be removed as their loan officer. (Id.)

After the Goyals complained of discrimination, Kozak's and Fifth Third's demands became more onerous, including a demand for "reviewed" financial statements for 2011 (made on Jan. 26, 2011) and a demand for "reviewed" financial statements for the year 2010 in order for Fifth Third to extend the A.H. note beyond its March 17, 2011, anniversary date. (Id. ¶ 22.)*fn3

Plaintiffs agreed to these demands. (Id. ¶ 23.) Fifth Third and Kozak misrepresented themselves by, among other things, agreeing that they would grant a 60-day extension to the line of credit if the Goyals would obtain assurance from a third-party accountant that it was preparing reviewed consolidated financial statements. (Id. ¶ 24.) Contradicting its previous representations, on March 21, 2011, Fifth Third sent a notice of default to A.H. Employee Company informing it that it would be in default if the note was not paid off by March 31, 2011, which represented the end of the 10-day cure period. (Id. ¶ 25). On April 7, 2011, Fifth Third sent notices to the Goyal entities identified as guarantors of the A.H. Note in ¶ 13, demanding that they pay off the outstanding balance of the A.H. Note. (Id. ¶ 26.) Then, on April 22, 2011, Fifth Third sent default and acceleration notices to several of the Goyal entities identified as borrowers in ¶ 10, informing them that the default on the A.H. Note was a default under A.H. Employee Company's guaranty of the various entities' loans. (Id. ¶ 27.) The Goyal entities' loans had been in good standing until the April 22, 2011, default notice was issued. (Id. ¶ 28.) On April 27, 2011, A.H. Employee Company paid off the A.H. Note in full, including legal fees. (Id. ¶ 29.) Despite this, Fifth Third continues to maintain that all of the Goyal entities' loans are in default due to the alleged default on the A.H. Note. (Id. ¶ 30.) The Goyals maintain that Defendants have treated them differently than similarly situated customers who do not share their ethnicity, color, or religion. (Id. ¶ 31.)

LEGAL STANDARD

Defendants have moved to dismiss under Rules 12(b)(1) and 12(b)(6). Defendants seek dismissal under 12(b)(1) because, they contend, various plaintiffs lack standing to pursue certain counts. Standing is a determination as to "whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Warth v. Seldin, 422 U.S. 490, 498 (1975). Rule 12(b)(1) motions to dismiss may be either facial or factual attacks on jurisdiction.

Mohamed v. Dorochoff, No. 11 C 1610, 2011 WL 4496228, at *2 (N.D. Ill. Sept. 22, 2011). Facial attacks go to the sufficiency of the pleadings, as compared to factual challenges in which the contention is that the complaint is formally sufficient, but that there is in fact no subject-matter jurisdiction. Id. (citing United Phosphorus, Ltd. v. Angus Chem. Co., 322 F.3d 942, 946 (7th Cir. 2003)). In the case of a factual challenge, the movant may use affidavits and other materials to support its motion. United Phosphorus, 322 F.3d at 946. Here, Defendants are not explicit about what type of challenge they are pursuing, but their standing challenge is based entirely on the First Amended complaint and various attachments, so it appears to be a facial challenge. Regardless, Plaintiffs bear the burden of showing that standing exists. Id.

To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient facts, accepted as true, "to state a claim for relief that is plausible on its face." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Although a complaint's factual allegations need not be detailed, they must provide more than "labels, conclusions, or formulaic recitations of the elements of a cause of action, and allege enough to raise a right to relief above the speculative level." Ruiz v. Kinsella, 770 F. Supp. 2d 936, 941--42 (N.D. Ill. 2011) (quoting Twombly, 550 U.S. at 555). In ruling on such a motion, the question is whether the facts, accepted as true, "present a story that holds together." Swanson v. Citibank, N.A., 614 F.3d 400, 404 (7th Cir. 2010).

ANALYSIS

As a preliminary matter, Defendants are correct that Plaintiff's pleading in regard to the Goyal entities is, in some instances, confusing at best. Two of the Goyal entities, Ace Health Center and AH Laser Aesthetics, appear in the caption of the First Amended Complaint but are mentioned nowhere in its body. All claims brought on behalf of these entities are dismissed. Additionally, while the First Amended Complaint alleges that Southwest Pacific LP; Arkansas-Illinois LP; Alabama-Illinois LP; Atlanta-Illinois LP; Arizona-Illinois LP; Kansas-Illinois LP; Lake Jefferson LP; 1640 North Partnership LP; and Southwest Cermak LP had loans with Fifth Third, Defendants argue that it is not clear how these entities are related to the A.H. Note. (Dkt. No. 28 (Defs.'Mem. in Supp., 6--7.)

While the First Amended Complaint is not a model of pleading clarity, it seems that Plaintiffs are alleging that when the A.H. Note went into default, this triggered a default of those entities' loans under the A.H. Employee Co.'s guaranty of the loans (First Am. Compl. ¶¶ 27--29, Dkt. No. 35 (Pl.'s Resp., 14).) Reading the complaint in the light most favorable to the Plaintiffs, the court will assume this to be true for the purposes of ruling on this motion. The court will address

each of the arguments raised by Defendants in turn.

1. Plaintiffs' Claims under Section 1981 (Count I)

In Count I, Plaintiffs seek to recover for discrimination and retaliation under § 1981. Defendants challenge Plaintiffs' pleading on two grounds. First, Defendants argue that many of the Plaintiff Goyal entities were merely guarantors of the A.H. Note and as such lack standing under § 1981. Next, they argue that Plaintiffs' allegations of discrimination are conclusory.

A. Whether the Claim Is Adequately Pleaded

As implicated in this case, § 1981 is meant to remedy racial discrimination in contractual relationships. See 42 U.S.C. § 1981(a)-(c). To establish a § 1981 claim, a plaintiff must show:

(1) that he is a member of a racial minority; (2) that the defendant intended to discriminate on the basis of race; (3) that the discrimination related to the making or enforcing of a contract. Morris v. Office Max, Inc., 89 F.3d 411, 413 (7th Cir. 1996). The Seventh Circuit has recently held that "while the federal pleading standard is quite forgiving, our recent decisions have emphasized that 'the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" Ray v. City of Chi., 629 F.3d 660, 662--63 (7th Cir. 2011) (internal citations and quotations omitted). In the context of racial discrimination, this burden is not onerous. See Swanson, 614 F.3d at 405 (holding that a housing discrimination claim satisfied Fed. R. Civ. P. 8 because it identified the type of discrimination, who carried it out, and when). Here, Plaintiffs allege that Defendants discriminated against the Goyals because of their East Indian ethnicity by forcing the A.H. Note into default and by retaliating against Plaintiffs when the Goyals complained of discrimination. (First Am. Compl. ¶¶ 36--39.) At this stage of the case, Plaintiffs' pleading of discriminatory intent is sufficient. Their allegations of standing, however, are more problematic.

B. The Standing of the Various Plaintiffs

Turning to Defendants' standing challenge, the U.S. Supreme Court has held that any claim brought under § 1981 must identify an impaired contractual relationship under which the plaintiff has rights. Domino's Pizza, Inc. v. McDonald, 546 U.S. 470, 476 (2006). The question here is which of the twenty-five named plaintiffs has successfully done so.

In Domino's Pizza, the U.S. Supreme Court held that contractual privity is the sine qua non of a § 1981 claim. 546 U.S. at 478. In that case, the plaintiff, John McDonald, was an African-American and the owner of JWM Investments, a company that entered into contracts with Domino's to build restaurants. Id. at 472. Domino's allegedly breached the contract, and McDonald sought to personally assert a § 1981 claim against it, asserting that Domino's breached the contracts because of racial animus toward him. Id. at 473. McDonald sought to recover pay and benefits he would have received but for the breach of contract. Id. at 474.

The Supreme Court rejected McDonald's argument that he had standing to sue because he was the actual target of discrimination and because he lost benefits that would have inured to him had the contracts not been impaired. Id. at 478. Rather, consistent with the plain text of the statute, § 1981 plaintiffs "must identify injuries flowing from a racially motivated breach of their own contractual relationship, not of someone else's." Id. at 480. This requires, at the very least, that the plaintiff have rights under the contract, with the Court leaving open the possibility that a third-party beneficiary could bring a § 1981 claim. Id. at 476 n.3.

It is clear under the reasoning of Domino's Pizza that A.H. Employee Company has standing to sue because it was a party to the A.H. Note and because it has the "imputed racial identity" of its owners, the Goyals. The Amber Pyramid, Inc. v. Buffington Harbor Riverboats, LLC, 129 Fed. App'x 292, 295 (7th Cir. 2005) (allowing corporate standing to bring a § 1981 claim). It is also clear that the Goyals do not have standing to sue under § 1981 merely because they are the owners of A.H. Employee Company and allegedly experienced economic loss because of the impaired contractual relationship. This is a claim that belongs to A.H. Employee Company.

Plaintiffs contend that the fact that "Fifth Third demanded that the identified named Plaintiffs cross collateralize the loans of one another or guarantee the loans of one another" is enough to confer standing on all the named Plaintiffs. (Pls.' Resp., 7.) This is not a particularly well-developed argument, as the Plaintiffs make no attempt to distinguish among the Goyals and their various entities, even though they played different roles in securing the A.H. Note, and even though some of the Goyal entities had their own loans that allegedly went into default as a result of the default on the A.H. Note. The fact that certain entities, and the Goyals themselves, were guarantors of the A.H. Note does not give them rights under the note. Beasley v. Arcapita Inc., 436 Fed. App'x 264, 266 (4th Cir. 2011); see also Thomas v. Nat'l Canada Fin. Corp., No. 94 C 4136, 1995 WL 54473, at *2 (N.D. Ill. 1995) (holding that guarantors of loan agreement

did not have standing to sue for breach of the agreement because their injuries were derivative of those of the borrower). In order to have standing, a guarantor of a corporate debt must allege an injury separate and distinct from the corporation's injury. Thomas, 1995 WL 54473, at *2. Here, the First Amended Complaint does not allege a breach of the guaranty agreements, but only of the A.H. Note and what the complaint describes as the "cross-defaulted" notes in ¶ 10. Therefore, the Goyal entities as guarantors have failed to plead any distinct injury that gives them standing to pursue a § 1981 claim, so they are dismissed for lack of standing.

However, as to those Goyal entities listed in ¶ 10*fn4 that contend their own loans went into default because Fifth Third determined that A.H. Employee Company had defaulted on the A.H. note, the analysis is different. The gist of Plaintiffs' complaint is that Defendants intended to force a technical default of the A.H. Note in order to force all of these other loans into default as well. (Id. ¶ 18.) The Goyal entities whose loans went into default have standing to sue under § 1981 because they are alleging a violation of their own contractual rights resulting from Defendants' alleged sabotage. Therefore, for the reasons stated above, the court will allow Count I to proceed as to A.H. Employee Company and the Goyal entities whose loans were allegedly cross-defaulted: Southwest Pacific LP, Forestview River LP, Arkansas-Illinois LP, Alabama-Illinois LP, Atlanta-Illinois LP, Arizona-Illinois LP, Kansas-Illinois LP, Lake Jefferson LP, Southwest Cermak LP, 1640 North Partnership LP and American Health Center Ltd. All other Plaintiffs lack standing to pursue a §1981 claim and are dismissed.

2. Plaintiffs' Claims under the Equal Credit Opportunity Act (Counts II and III)

In Count II, Plaintiffs seek to recover for a breach of the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691(a)(1), which makes it unlawful for a creditor to discriminate or relaliate against any applicant with respect to a credit transaction on the basis of race, color, religion, or national origin. The statute also requires that "[each] applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor." § 1691(d)(2).

As for Plaintiffs' claims under § 1691(a), the complaint alleges that all the Plaintiffs were applicants under the ECOA because "each and every Plaintiff is or may become contractually liable regarding an extension of credit or other credit as provided under the ECOA. (First. Am. Comp. ¶ 44.) At issue here is the definition of "applicant" under the statute. The Federal Reserve Board has issued a regulation defining an applicant as: any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of § 202.7(d), the term includes guarantors, sureties, endorsers, and similar parties.

12 C.F.R. § 202.2(e). Section 202.7(d), which is not at issue in this case, bars a creditor from requiring the signature of a qualified applicant's spouse. In Moran v. Mid-Atlantic Mkt. Dev. Co., 476 F.3d 436, 441 (7th Cir. 2010), the Seventh Circuit in dicta questioned whether "the statute could be stretched far enough to allow" the inclusion of guarantors in the definition of applicant. The Seventh Circuit reasoned that while deference to the administrative interpretation of ambiguous statutes was appropriate, there was nothing ambiguous about the definition of "applicant," and including guarantors within that definition could open up "vistas of liability" that Congress had not anticipated. Id.

Plaintiffs note that the Seventh Circuit cited 12 C.F.R. § 202.2(e) in a recent ruling, Estate of Davis v. Wells Fargo Bank, 633 F.3d 529, 538 (7th Cir. 2011). (Pls.' Resp., 8.) While this is correct, the Seventh Circuit did not discuss whether guarantors may bring claims under the ECOA in Estate of Davis. The court agrees with Defendants that the guarantors of the A.H. Note lack standing to bring a claim under the ECOA. The ECOA's original definition of "applicant" excluded guarantors, but the definition was amended in 1985 to include such parties for the purposes of the spousal signature provision. Durdin v. Cheyenne Mountain Bank, 98 P.3d 899, 902 (Colo. App. 2004). The official staff commentary regarding the change states that the principal effect was to give guarantors standing under §207(d). Id. (citing 50 Fed. Reg. 48020 (1985)). In fact, the commentary added, "The Board had proposed to define such parties as applicants without limitation. The final version of the definition was modified in response to the concerns of industry commenters who believed that the unlimited inclusion of guarantors and similar parties in the definition might subject creditors to a risk of liability for technical violations of various provisions of the regulation." 50 Fed. Reg. 48020. This commentary indicates a desire to limit the definition of "applicant," and to include guarantors only under circumstances not present in this case.

For these reasons, Plaintiffs do not have standing to bring a claim under the ECOA based on their status as guarantors of the A.H. Note. It is unclear to the court, however, whether the various Goyal entities are bringing a claim based solely on their status as guarantors of the A.H. Note, or because of their own status as holders of notes with Fifth Third that went into default as a result of the default of the A.H. Note, although their response indicates the latter. (See Pls.' Resp., 9: "All of the guarantors and the cross-collateralized loans [sic] became contractually liable, and thus they have standing as a alleged in the complaint."). A complaint on behalf of the holders of the notes that were cross-collateralized for discrimination or retaliation may be viable, and Plaintiffs are given until March 15, 2012 to replead their claim under § 1691(a) if they choose. Otherwise, the only appropriate plaintiff is the A.H. Employee Company, which was a party to the A.H. Note. Defendants additionally argue that A.H. Employee Company failed to plead

sufficient facts to support discrimination or retaliation, but that argument is rejected for the reasons discussed in relation to Plaintiffs' § 1981 claim.

Under § 1691(d)(2) of the ECOA, a creditor who takes an "adverse action" against an applicant for credit must give the applicant a statement of reasons for the action. In addition to their standing argument as to the guarantor plaintiffs, Defendants contend that this claim must be dismissed because an "adverse action" does not include "a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default."

15 U.S.C. § 1691(d)(6). As such, Defendants contend, the ECOA does not require a creditor to provide any notification to a borrower who is in default. (Defs.' Mem. in Support, 10.) However, the authority upon which Defendants rely, Howard v. Brim, No. 3:06CV70, 2006 WL 4757828, at *4--5 (W.D.N.C. June 8, 2006), is distinguishable because it is a case in which the creditor's adverse action resulted from the plaintiff's delinquency. Here, accepting the allegations of the complaint as true, Plaintiffs allege that Defendants' wrongful actions preceded the default because they made no late payments and provided the information that Defendants requested, but defendants nonetheless wrongfully forced a technical default of the A.H. Note. (First Am. Compl. ¶¶ 9, 22--27.) Given these allegations, the court will allow this claim to go forward as to A.H. Employee Company. However, guarantors do not have standing to bring a claim under this section of the ECOA for the reasons explained above. If the holders of the cross-collateralized notes are claiming that they did not receive a statements of reasons for the revocation of their own credit, this is not clear from Plaintiffs' complaint, which refers only to the A.H. Note. (First Am. Compl. ¶ 50--52.) If Plaintiffs wish to make such a claim, they should replead the complaint to reflect this by March 15, 2012.

3. Plaintiffs' Claims Under the Illinois Fairness in Lending Act (Count IV)

All Plaintiffs bring a claim in Count IV under the Illinois Fairness in Lending Act ("IFLA"), 815 ILCS 120/3, alleging that Defendants violated the IFLA by: (1) denying or varying the terms of Plaintiffs' loans without having considered "all of the regular and dependable income of the Plaintiffs," and/or (2) denying or varying the terms of Plaintiffs' loans "because of the childbearing capacity of the persons who would benefit by the loans," and/or; (3) "by utilizing lending standards that have no economic basis and are discriminatory in effect." (First Am. Compl. ¶ 54.)*fn5

Defendants argue the Plaintiffs' claim under the IFLA must be dismissed because the guarantor Plaintiffs do not have standing and because the IFLA requires a plaintiff to choose between pursuing a remedy under the IFLA or under another applicable law. Specifically, the IFLA provides:

If the same events or circumstances would constitute the basis for an action under this Act or an action under any other Act, the aggrieved person may elect between the remedies proposed by the two Acts but may not bring actions, either administrative or judicial, under more than one of the two Acts in relation to those same events or circumstances. 815 ILCS 120/5(b). Here, Plaintiffs are not proceeding under 815 ILCS 120/3(c-5), which prohibits the denial or variance of a loan on the basis of race or national origin, but rather under the provisions that provide relief if a lender denies a loan or varies its terms without considering "all of the regular and dependable income of each person who would be liable for repayment of the loan," 815 ILCS 120/3(b), or if a lender "utilizes lending standards that have no economic basis and which are discriminatory in effect." 815 ILCS 12/3(c). Plaintiffs argue that there is no other law that provides relief under these circumstances, so their IFLA claim should be allowed to go forward. (Pls.' Resp., 11.)

The parties do not present any Illinois case law interpreting the IFLA's election-of-remedies provision, and the court has not found any. However, courts within this district have interpreted it to bar IFLA claims if the plaintiff has brought a cause of action arising from the same transaction under a different statute. See Haymer v. Countrywide Bank, No. 10 C 5910, 2011 WL 2790172, at *2 (N.D. Ill. July 15, 2011) (dismissing IFLA claim for improvident lending and discrimination where the plaintiff also brought claims under the ECOA and other federal statutes); Smith v. United Residential Servs. & Real Estate, Inc., No. 2011 WL 3047492, at *4 (N.D. Ill. July 25, 2011) (similarly dismissing IFLA claim where plaintiff had brought claims under a variety of other federal statutes). Because Plaintiffs' claims all arise out of the same events or circumstances, and because Plaintiffs are pursuing other statutory claims, their IFLA claim is dismissed.

4. Plaintiffs' Claims for Breach of the A.H. Note (Count V)

In Count V, Plaintiffs seek to recover for breach of the A.H. Note. The A.H. Note was signed by Vinod Goyal as president on behalf of A.H. Employee Co., Ltd., the borrower. (Dkt. No. 1., Ex. A.) Defendants argue that this count is insufficiently pleaded, and that the Goyal entities that served as guarantors on the A.H. Note lack standing. The court agrees.

Plaintiffs argue that all of the named guarantors also have standing to bring a breach of contract claim because they were directly injured by the breach of contract. Once again, Plaintiffs do not draw any real distinction between the entities that were guarantors on the A.H. Note and those that had their own loans with Fifth Third. Rather, Plaintiff argues, "A benefit was directly received by each of the entities in that they were dependent upon the good standing of A.H. Employee as a guarantor to their loans to continue with their own lending relationship with Fifth Third; or other

Plaintiffs were guarantors of the [A.H. Note] and thus had a mutual interest in the good standing of that entity." (Pls.' Resp., 12.)*fn6

The law is clear that status as a guarantor of a corporate debt does not result in a contractual relationship sufficient to create standing for breach of contract. See, e.g., Mid-State Fertilizer Co. v. Exch. Nat'l Bank of Chi., 877 F.2d 1333, 1336 (7th Cir. 1989); Shreeji Krupa v. Leonardi Enters., No. 04 C 7809, 2007 WL 178305, at *3 (N.D. Ill. Jan. 17, 2007); Thomas, 1995 WL 54473, at *2 (N.D. Ill. 1995). In Mid-State Fertilizer, the Seventh Circuit reasoned that guarantors are contingent creditors who succeed to the original creditor's claim against a company. 877 F.3d at 1336. Just as a creditor cannot directly recover for an injury inflicted on a company, guarantors cannot do so. Id.

Plaintiffs make an argument that they are all third-party beneficiaries of the A.H. Note, but they point to no language in the A.H. Note or the guaranties to that effect. Under Illinois law, a third party may sue for breach of contract if the contract was entered into for the direct benefit of that party, but the contract must at least define the third party by description of class, and the particular class member must be identified at the time performance is due. Indus. Hard Chrome, Ltd. v. Hetran, Inc., 76 F. Supp. 2d 903, 905 (N.D. Ill. 1999). The other entities that had loans with Fifth Third have brought their own claim in Count VI that their respective notes were breached. As it stands, Count V of the complaint refers only to the breach of the A.H. Note, First Am. Compl. ¶ 59-- 61, and only A.H. Employee Company has standing to bring that claim.

Under Illinois law, a plaintiff must allege four elements to state a breach of contract claim: (1) the existence of a valid and enforceable contract; (2) substantial performance by the plaintiff; (3) a breach by the defendant; and (4) damages. Reger Development, LLC v. Nat'l City Bank, 592 F.3d 759, 764 (7th Cir.2010). At issue here is the sufficiency of A.H. Employee Co.'s allegations of a breach. Defendants argue that A.H. Employee Company has pleaded itself out of court because its claim for breach of the A.H. Note is predicated on its assertion that Fifth Third failed to provide requisite notice of its intent to renew the note, see Pl.'s Compl. ¶ 59, but plaintiffs have included documents that prove that Fifth Third sent proper notice of non-renewal. Defendants refer to exhibits that Plaintiffs attached to their response to Defendants' initial motion to dismiss, prior to this court granting leave to Plaintiffs to file their First Amended Complaint. (Dkt. No. 20., Ex. 1, 2.) Those exhibits are emails from Kozak to Vijay Goyal. In an email dated Jan. 26, 2011, Kozak stated that he was attaching the required notice of non-renewal, adding that "[t]his letter will serve as the notice that is required per the loan agreement (copy also attached) prior to the anniversary date of the note (March 17, 2011.)"*fn7 In response, A.H. Employee Co. admits that notice was sent, but contends that Kozak and Fifth Third made misrepresentations and acted in bad faith. (Pls.' Resp., 13.) A. H. Employee Co. points to a Feb. 28, 2011, email in which Kozak told Vijay Goyal that if the bank could receive a commitment letter from a third party CPA confirming that the CPA was preparing the financials as requested, "we would consider a 60 day extension to allow the CPA time to complete. Until we have that commitment letter, the line of credit facility in the name of A.H. Employee Company and ACH facilities in the name of American Health Center will expire on 3/17/11." (Dkt. No. 20, Ex. 2.)

A.H. Employee Co. contends in its response that it did send such a commitment letter, but that Defendants defaulted the A.H. Note anyway without further notice. (Pls.' Resp., 13.) However, the First Amended Complaint does not rely on these facts, but rather alleges that Fifth Third failed to provide written notice of its intent not to renew the A.H. Note at least 30 days prior to its maturity date. (Pl.'s Comp. ¶ 58, 59.) Since A. H. Employee Co. concedes that Fifth Third did provide notice, its breach of contract claim cannot go forward on this basis. A.H. Employee Company may be able to plead a valid breach of contract claim, but it has not done so.

A.H. Employee Co. is given until March 15, 2012, to file a Second Amended Complaint consistent with this opinion if it desires to replead its claim for breach of contract.

5. Plaintiffs' Claims for Breach of the Cross-Defaulted Loans (Count VI)

In Count VI, all Plaintiffs seek to recover for the breach of the cross-defaulted loans, apparently identified in ¶ 10 of the complaint.*fn8 Plaintiffs allege that all of their loans went into default because of the improper default of the A.H. Note. (Pl.'s Compl. ¶ 63.) Fifth Third breached these notes when it improperly called them into default in its April 22, 2011, default and acceleration notices. (Id. ¶ 64). Fifth Third additionally breached its contracts with Plaintiffs because any alleged default triggered by the default of the A.H. Note was cured by April 27, 2011, the date on which the A.H. Note was paid off in full. (Id. ¶ 65). As a result of the breach, all Plaintiffs, whether guarantors, those that provide security agreements, or those that had cross-collateralized loans, have incurred significant money damages. (Id. ¶ 66).

As an initial matter, Defendants have a point that Plaintiffs should be clearer about identifying the cross-defaulted loans, their terms, and the parties thereto. Although the court assumes these are the loans outlined in ¶ 10, Plaintiffs when repleading in their Second Amended Complaint should make this clear. Because Count VI is premised on the breach of the A.H.

Note, it is dismissed without prejudice. Plaintiffs should replead this count by March 15, 2012 to clarify the basis for the breach of that note. For the reasons outlined herein, Count VI may be brought only on behalf of Plaintiffs who were parties to the cross-defaulted loans, not guarantors. Additionally, Plaintiffs failed to explain why Kozak, as an agent of Fifth Third and not a party to the notes, can be held liable for either alleged breach of contract. Kozak is dismissed from these counts, and Plaintiffs' repleading of Count V and Count VI should be directed only to Fifth Third.

5. Plaintiffs' Claims for Promissory Estoppel, Negligent Misrepresentation, and Intentional Misrepresentation (Count VII, VIII, IX)

In Count VII, all Plaintiffs allege promissory estoppel and that they justifiably relied on Defendants' promises that if Defendants' demands for more financial information were met, Fifth Third would automatically renew the A.H. Note. (First Am. Compl. ¶ 67--69.) Plaintiffs contend that they relied on Defendants' representations to their detriment, and that despite providing all of the requested information, including a commitment letter from a third party CPA, Fifth Third refused to consider an extension of the note in good faith, and declared that the A.H. Note was in default. (Id. at ¶ 70.)

Count VIII, which was brought on behalf of the Goyals and A.H. Employee Co., alleges intentional misrepresentation. Plaintiffs allege that Kozak falsely told them the A.H. Note would be extended if certain financial information was provided, and falsely told them they would have a 60-day extension of the note in order to provide that information. (Id. at ¶ 74.) Kozak knew his statements were false, and Plaintiffs relied on the statements, suffering damages. (Id. at ¶ 75--77.) In Count IX, also brought on behalf of the Goyals and A.H. Employee Co., Plaintiffs allege that those same statements were negligently made by Kozak. (Id. ¶ 80). Kozak intended that Plaintiffs rely on the statements and they did so, resulting in damages. (Id. ¶¶ 80--81.)

Defendants argue, in part, that all of these claims are barred by the Illinois Credit Agreements Act ("ICAA"). The ICAA provides that a debtor cannot maintain an action based on a "credit agreement" unless the agreement "is in writing, expresses an agreement or commitment to lend money or extend credit or delay or forbear repayment of money, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." 815 ILCS 160/2. This has been described as a "strong form of the statute of frauds." Help at Home, Inc. v. Med. Capital, LLC, 260 F.3d 748, 754 (7th Cir. 2001) (internal citations omitted). The ICAA requires the signatures of both parties and "bars all actions that are in any way related to the alleged credit agreement, whether those actions sound in contract or in tort," and even though this requirement may lead to harsh results. Id. In sum, Illinois courts and courts within this district have held that the ICAA "is to be construed broadly to prohibit all claims arising from alleged extra-contractual representations, omissions or conduct in a credit relationship." VR Holdings, Inc. v. LaSalle Bus. Credit, Inc., No. 01 C 3012, 2002 WL 356515, at *3 (N.D. Ill. March 6, 2002) (citing McAloon v. Northwest Bancorp, Inc., 654 N.E.2d 1091, 1094 (Ill. App. Ct. 1995)).

Plaintiffs rely on certain emails from Kozak, see Pl.'s Compl. ¶ 24, but fail to allege that the emails expressed an agreement to extend the A.H. Note, that the emails set forth the relevant terms and conditions, or that they were signed by both parties. One of the emails, in fact, says that Fifth Third would "consider" renewal of the A.H. Note if it received a commitment letter from a third party CPA confirming that the requested financial information was being prepared. (Dkt. No. 20, Ex. 1.) Because Plaintiffs have not met the requirements of the ICAA, Counts VII through IX are dismissed with prejudice, and the court need not address Defendants' alternative argument that certain Plaintiffs lack standing.

6. Plaintiffs' Claim under the Freedom of Access to Clinic Entrances Act (Count X)

In Count X, several of the Plaintiffs, Michigan Avenue Center for Health, Access Health Center, Ltd., A C U Health Center, Advantage Healthcare, Aanchor Health Center, and Forestview Medical Center, allege that Defendants violated the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248. The discriminatory acts, Plaintiffs allege, were motivated by Defendants' intent to prevent these clinics from providing abortions. (First Am. Compl. ¶ 83.) Plaintiffs allege that Defendants' conduct in issuing notices of default "constitute threats of economic force, which induced reasonable fear on the part of Plaintiffs that Fifth Third would use that economic force to prevent Michigan Avenue Center for Health from providing abortions. Fifth Third has the apparent ability to carry out the threat." (Id. at ¶ 84.)*fn9 Plaintiffs seek injunctive relief and punitive damages, although it not clear exactly what manner of an injunction they seek. (Id. at ¶¶ 86--88.) At any rate, Plaintiffs essentially allege that by causing the A.H. Note's default, and that of the cross-collateralized loans, Fifth Third "substantially impacted the functioning and economic viability of the reproductive health clinics that relied on the loan from Fifth Third bank for years." (Pls.' Resp., 17.)*fn10

The key question here is whether the FACE Act applies to the use or threat of "economic force." Defendants contend, based on the plain language of the statute, that it does not. The court agrees. In interpreting a statute, the court must begin with its plain language. United States v. LaFaive, 618 F.3d 613, 616 (7th Cir. 2010). The court may refer to " 'the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." Id. (internal citations and quotations omitted). The court will consider the legislative history of a statute only when the statute is ambiguous. DirecTV, Inc. v. Barczewski, 604 F.3d 1004, 1008 (7th Cir. 2010).

The FACE Act provides that civil and criminal penalties may be imposed on a person who:

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

(3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worship.

18 U.S.C. § 248 (a)(1-3).

It is clear to the court that the "force" to which the statute refers is not economic force, but physical force, particularly efforts to bar women from entering reproductive health clinics. The definitions provided by the statute for its bear this out. To "'interfere with' means to restrict a person's freedom of movement." 18 U.S.C. § 248(e)(2). To "'intimidate' means to place a person in reasonable apprehension of bodily harm." 18 U.S.C. § 248(e)(3). A "physical obstruction" is that which "render[s] impassable ingress to or egress from a facility that provides reproductive health services . . . ." In the context of First Amendment challenges, other courts have interpreted the term "force" in the FACE Act to be limited to physical force. Cheffer v. Reno, 55 F.3d 1517, 1521 (11th Cir. 1995) (holding that the defined terms in the statute supported an interpretation of "force" as physical force); Am. Life League, Inc. v. Reno, 47 F.3d 642, 648 (4th Cir. 1995) (interpreting "force" within the statute to mean the use of force, true threats of force, and physical obstructions).

Plaintiffs point to the legislative history of the FACE Act as support for their position that the statute implicates "economic force," but the court need not consider this when the language of the Act is clear. Regardless, Plaintiffs' reading of the legislative history is flawed. In enacting the FACE Act, Congress found that there had been "an interstate campaign of violent, threatening, obstructive, and destructive conduct aimed at providers of reproductive health services across the nation." H.R. Rep. No. 103-488, at 7 (1994) (Conf. Rep.), reprinted in 1994 U.S.C.C.A.N. 699, 724. Congress cited conduct including blockades, arsons, death threats, and even murder. Id. It found that such conduct burdened interstate commerce by forcing patients to travel to other states to obtain care and by interfering with health care provider's ability to purchase and lease facilities and equipment, sell goods and services, and buy supplies and medicine from other states. Id. Congress made no reference to any sort of economic intimidation in these findings. Id.

The Seventh Circuit, in United States v. Wilson, 73 F.3d 675, 679--80 (1995), found the FACE Act to be a constitutional exercise of Congress' power to regulate activities that substantially affect interstate commerce. Plaintiffs seem to argue that because Congress enacted the FACE Act under the Commerce Clause and addressed the economic consequences of obstructing clinics, it follows that Congress intended to ban economic activity that affects the functioning of clinics. (Pls.' Resp., 17--18.) This is a non-sequitur, however. Just because Congress is exercising its power under the Commerce Clause does not mean that it must ban all activity that might substantially affect interstate commerce, or that it constitutionally could do so. It is clear that in enacting the FACE Act Congress was concerned with violence, threats of violence, and physical obstructions to clinic access. The Act is inapplicable here, and Count X of Plaintiffs complaint is dismissed with prejudice.

7. Michael Kozak's Status as a Defendant

Finally, Defendants contend that Kozak must be dismissed from the suit because the conduct at issue is Fifth Third's non-renewal of the A.H. Note, and Fifth Third's actions cannot be imputed to its agent. (Defs.' Mem. in Support, 7.) However, under section 1981, individuals who are personally involved in impairing the right to contract may be held liable. See Patel v. Bd. of Governors of State Colls. and Univs., 92 C 8300, 1997 WL 399644, at *3--4 (N.D. Ill. July 11, 1997). Plaintiffs allege that Kozak was personally involved in the alleged efforts to force the A.H. Note into default, which in turn triggered the default of the cross-collateralized loans in the portfolio, and that he acted with discriminatory animus. (Pls.' First Am. Compl. ¶¶ 17, 18, 20, 21, 22, 24, and 31.) As such, Kozak will not be dismissed from Count I. The parties direct no specific arguments as to whether Kozak is a proper defendant under the ECOA for the purposes of Counts II and III. Under ECOA, a creditor is defined as "a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit."

12 C.F.R. § 202.2(l). Because the parties do not address whether Kozak meets this definition, the court will not dismiss the ECOA claim against him at this time.

CONCLUSION

For the reasons stated herein, Defendants' motion to dismiss is granted in part and denied in part. Count I, alleging a violation of § 1981, may go forward as to A.H. Employee Co. and those Goyal entities that had loans with Fifth Third that were defaulted as a result of A.H. Employee Co.'s alleged default of the A.H. Note. Count II, alleging discrimination and retaliation under § 1691(a) of the ECOA, may go forward as to A.H. Employee Co., with Plaintiffs to replead their claim by March 15, 2012, to clarify whether they are bring a claim on behalf of the holders of the cross-collateralized notes. Similarly, Plaintiffs' claim in Count III under § 1691(d) of the ECOA may go forward as to A.H. Employee Co., but should be replead as to the holders of the cross-collateralized notes by March 15, 2012. Count IV, alleging a violation of the IFLA, 815 ILCS 120/3, is dismissed with prejudice. Counts V and VI, alleging a breach of the A.H. Note and the cross-collateralized loans, respectively, are dismissed, with leave to replead by March 15, 2012. Counts VII through IX, alleging promissory estoppel, negligent misrepresentation, and intentional misrepresentation, are dismissed with prejudice. Count X, alleging a violation of the FACE Act, 18 U.S.C. § 248, also is dismissed with prejudice. Plaintiffs are given leave to file a Second Amended Complaint no later than March 15, 2012. Defendants' answer is to be filed no

later than March 29, 2012. The case is set for a report on status at 9:00 AM on April 3, 2012, in courtroom 1041.

ENTER:

JAMES F. HOLDERMAN Chief Judge, United States District Court

Attachment #5

CRAIN'S CHICAGO BUSINESS. Print Story Printed from ChicagoBusiness.com

The $20 million fraud scheme that almost never ended

By Kristen Schorsch October 29, 2013

Two physicians with a string of suburban women's health clinics allege that a North Side bank missed more than two decades of red flags, allowing two former employees to steal $20 million.

Drs. Vijay Goyal and Vinod Goyal accuse Devon Bank of "turning a blind eye" to the alleged fraud for 21 years, according to a complaint filed on Oct. 16 in Cook County Circuit Court. The husband-and-wife physician team own 11 for-profit health centers in the Chicago area, including Arlington Heights-based Affiliated Health Group Ltd. and Downers Grove-based Access Health Center Ltd.

A spokesman for Devon Bank, which was founded nearly 70 years ago by a group of local merchants, declined to comment.

The case raises questions about the banking practices of Devon, which has assets of $233 million and is located near the intersection of Devon and Western avenues. But it also highlights the importance for medical practices to audit their books regularly and establish procedures to catch financial discrepancies, even if their money is under the watchful eye of friends and family.

"You never know who it's going to be," Steven Lewis, a director at Chicago-based accounting firm Ostrow Reisin Berk & Abram Ltd., said of potential thieves. "It's usually your trusted person."

In addition to the bank, the complaint names as a defendant Irina Nakhshin, a former employee whose duties included entering medical insurance payments into computers at the physicians' offices, the complaint says.

But Ms. Nakshin and another former employee, Inna Koganshats, opened accounts at Devon Bank in the names of ventures nearly identical to ventures that the physicians actually controlled, the complaint says. The Goyals did not have other accounts at Devon, according to the complaint.

In a series of "highly irregular or highly suspicious" transactions, the two women wrongfully deposited checks into their accounts checks that were intended for the Goyals or their businesses, the complaint says.

The bank ignored "red flags" about the transactions, even though it was equipped with software programs and other procedures to detect such frauds, the lawsuit said.

The practice apparently continued until this year, though it's not clear what triggered the discovery.

Drs. Goyal and Goyal did not return a message to comment. Their attorney, Devon Bruce, a partner at Chicago-based Power Rogers & Smith PC, called the case a "tragic incident of embezzlement."

"It is clear from the available evidence that Devon Bank repeatedly violated reasonable commercial banking standards," Mr. Bruce said.

Ms. Nakhshin and Ms. Koganshats could not be reached to comment.

Attachment #6

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JESSE WHITE
SECRETARY OF STATE

CORPORATION FILE DETAIL REPORT

Entity Name	APOLLO HEALTH CENTER, LTD.	**File Number**	66689611
Status	MERGE/CONSOLIDATED		
Entity Type	CORPORATION	**Type of Corp**	DOMESTIC BCA
Incorporation Date (Domestic)	12/11/2009	**State**	ILLINOIS
Agent Name	SCOTT H REYNOLDS	**Agent Change Date**	12/11/2009
Agent Street Address	2 N LASALLE ST STE 1300	**President Name & Address**	VIJAY GOYAL 3 GOLF CENTER RD #356 HOFFMAN ESTATES IL 60169
Agent City	CHICAGO	**Secretary Name & Address**	MERGED OR CONSOLIDATED 07 10 14 IL LLC
Agent Zip	60602	**Duration Date**	PERPETUAL
Annual Report Filing Date	12/09/2013	**For Year**	2013
Assumed Name	INACTIVE - APOLLO SURGICAL CENTER		

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JESSE WHITE
SECRETARY OF STATE

CORPORATION FILE DETAIL REPORT

Entity Name	FORESTVIEW MEDICAL CENTER, LTD.	**File Number**	63280658
Status	ACTIVE		
Entity Type	CORPORATION	**Type of Corp**	DOMESTIC BCA
Incorporation Date (Domestic)	12/30/2003	**State**	ILLINOIS
Agent Name	SCOTT H REYNOLDS	**Agent Change Date**	12/30/2003
Agent Street Address	2 N LASALLE ST #1300	**President Name & Address**	VIJAY GOYAL 3 GOLF CENTER RD #356 HOFFMAN ESTATES IL 60169
Agent City	CHICAGO	**Secretary Name & Address**	EDYTA BARABAS GOLF CENTER RD #356 HOFFMAN ESTATES IL 60169
Agent Zip	60602	**Duration Date**	PERPETUAL
Annual Report Filing Date	12/09/2014	**For Year**	2014
Old Corp Name	10/12/2004 - FOREST VIEW MEDICAL CENTER, LTD.		

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Purchase Certificate of Good Standing

(One Certificate per Transaction)

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Dimensions Signed 9/10/10

State of Illinois
Illinois Department of Public Health

Ambulatory Surgical Treatment Center Renewal Licensure

Attachment #7

SUPPLEMENT II

Personnel: List position and/or classification; name, education, experience, professional licensure or certification.

POSITION AND/OR CLASSIFICATION	NAME	LICENSE NUMBER, REGISTRATION CERTIFICATION, AND YEARS EXPERIENCE	
Administrator	Nelson, Nancy	5 yrs	
Medical Assistant	Habel, Avery	4 yrs	
Registered Nurse	Jannotta, Margaret R.N.	26 yrs	041198775
Registered Nurse	Abbinante, Barb R.N.	16 yrs	041280380
Registered Nurse	Banach, Eva R.N.	24 yrs	041218525
Nurse Practitioner	Johnson, Susan N.P.	10 yrs	041136042
Medical Assistant	Wantuch, Sylwal	2 yrs	
Medical Assistant	Drongpa, Tenzin	3 yrs	
POC/Orderly	Jaworski, Eugene	17 yrs	
Lab Technician	Echiverri, Luzvida	22 yrs	
Ultrasound Technician	Kublanova, Olga	7 yrs	
Medical Records	Stevens, Marisela	16 yrs	
Receptionist	Santiago, Maria	13 yrs	
Receptionist	Krippes, Lisa	8 yrs	
Counselor	Keith, Jennifer	7 yrs	
Counselor /Me dical Assistant	Bayani, Catherine	8 yrs	
Cashier	Blameuser, Jayne	36 yrs	
Orderly	Vasnani, Ramesh	5 yrs	

Signed 12/30/11

Forest View Medical Center, Ltd.
License #7002793
Renewal Application

Personnel Staff

Position/Classification	Name	License Number/Registration Certificate/Years Experience
Administrator	Nancy Nelson	8 years experience
Administrative Assistant	Jessica Bridgewater	3 years experience
Medical Assistant	Avery Habel	31 years experience
Medical Assistant	Tenzin Drongpa	5 years experience
Medical Assistant	Sylwia Wantuch	5 years experience
Medical Assistant/Health Educator	Catherine Bayani	10 years experience
Health Educator	Jennifer Keith	9 years experience
Health Educator	Samantha Garcia	1 year experience
Health Educator	Kamila Stoksik	3 years experience
RN	Margaret Jannotta	041-1198775, 31 years experience
RN	Eva Banach	041-218525, 25 years experience
RN	Elizabeth Clark	041-386638, 1 year experience
Ultrasound Tech	Olga Kublanova	10 years experience
Ultrasound Tech	Diana Dimitrova	1 year experience
POC/Orderly	Eugene Jaworski	19 years experience
Lab Technician	Luzvida Echiverri	24 years experience
Medical Records	Marisela Stevens	18 years experience
Cashier	Jayne Blameuser	38 years experience
Orderly	Ramesh Vasnani	7 years experience