



STATE OF ILLINOIS  
HEALTH FACILITIES AND SERVICES REVIEW BOARD

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DOCKET NO: <b>H-01</b>	BOARD MEETING: April 30, 2019	PROJECT NO: 18-047	PROJECT COST:
FACILITY NAME: Ophthalmology Surgery Center of Illinois		CITY: Itasca	Original: \$3,975,093
TYPE OF PROJECT: Substantive			HSA: VII

**PROJECT DESCRIPTION:** The Applicant (Ophthalmology Surgery Center of Illinois, LLC) proposes to establish a single-specialty ASTC in leased space at a cost of \$3,975,093. The anticipated project completion date is June 30, 2020.

## **EXECUTIVE SUMMARY**

### **PROJECT DESCRIPTION:**

- **The Applicants** (Ophthalmology Surgery Center of Illinois, LLC) propose to establish a single-specialty ASTC in 5,916 GSF of leased space at a cost of \$3,975,093. The anticipated project completion date is June 30, 2020.
- The proposed facility will have two operating rooms and eight recovery stations. The surgery center will provide Ophthalmology surgical services.
- The proposed facility will be located in an existing building, located at 1300 Arlington Heights Road, Itasca.

### **WHY THE PROJECT IS BEFORE THE STATE BOARD:**

- The proposed project is before the State Board because it establishes a health care facility as defined at 20/ILCS 3960/3.

### **PURPOSE OF THE PROJECT:**

- The Applicants stated: *"The proposed surgery center will improve access to ophthalmology surgical services to residents in the northwestern Chicago suburbs, particularly low-income residents on Medicaid. There are 8 hospitals and 18 ASTCs within ten miles of the proposed surgery center. Area hospitals are not feasible as they are less efficient and a higher cost setting for patients. Further, the proposed surgery center will perform ophthalmology surgical procedures that require specialized equipment. Of the 18 ASTCs in the geographic service area, only 4 ASTCs perform ophthalmology and laser eye procedures. Two of the surgery centers do not accept Medicaid. While the remaining ASTCs provide a limited amount of Medicaid care, they have closed medical staffs. The proposed surgery center will allow the physicians of Kovach Eye Institute a location where their Medicaid patients can receive surgical treatment for their vision problems".* [Application for Permit page 53]."

### **PUBLIC HEARING/COMMENT:**

- A public hearing was held in regard to this project on February 13, 2019, at the Itasca Community Library, Itasca. The hearing was held from 11:00am to 2:00pm, and was officiated by Jeannie Mitchell and Ann Guild, Board Staff. Eight individuals were in attendance, with 5 registering their opposition and 3 registering their support. No letters of opposition were received by State Board Staff. Letters of support were received
  - Shirlanne Lemm, President & CEO, Itasca Chamber of Commerce
  - Shirlanne Lemm, President & CEO, GOA Regional Business Association
  - John Carpenter, President & CEO, Choose DuPage Economic Alliance
  - Jef Pruyn, Mayor of Itasca
  - Dr. Mark Skowron, O.D., Skowron Eye Care

### **SUMMARY:**

- The State Board Staff reviewed the Application for Permit, the materials submitted in support of this project, and data contained in the 2017 IDPH ASTC profile. The proposed project, as mentioned above, is an effort to improve access to the residents of the service area by providing ophthalmologic surgical procedures to an underserved population (Medicaid patients), in the service area.
- There are eighteen ASTCs in the proposed GSA, and eight hospitals (See Table Seven). The applicant notes that only four of the ASTCs in Table Seven provide Ophthalmologic surgery. Board staff discovered eight (see underlined facilities in Table Seven). Of the eight facilities identified by State Board staff, six reported as having served Medicaid patients in 2017.

- The entirety of the referrals for the proposed ASTC will be coming from physicians associated with Kovach Eye Institute, Elmhurst, and the facilities in which their historical referrals originated. The applicant attests that the majority of the surgical referrals originate from within the geographic service area (GSA).
- There is surgical capacity at six of the eight hospitals and twelve of the eighteen ASTCs in the service area. Further, six of the eight ASTCs in the service area that provide Ophthalmology surgical service accept Medicaid and are classified as underperforming per the State standard.

<b>State Board Standards Not Met</b>	
<b>Criteria</b>	<b>Reasons for Non-compliance</b>
<b>Criterion 1110.235 (c) – Geographic Service Area Need</b>	The Applicant supplied referral data that proves only 34.6% of the patients referred to the ASTC reside in the service area.
<b>Criterion 1110.235 (c)(6) – Service Accessibility</b>	The proposed ASTC will not improve access to any services or for any specialized population residing in the service area.
<b>Criterion 1110.235 (c)(7) – Unnecessary Duplication/Maldistribution</b>	The proposed project will duplicate services currently provided at eight facilities in the service area, seven which are classified as performing under the State Board standard.
<b>Criterion 1120.120 -Availability of Funds</b>	The State Board Staff could not determine from the documentation that has been provided if the \$1.5 million loan will be made should the Board approve this project.
<b>Criterion 1120.140 (a) -Reasonableness of Project Financing &amp; Terms of Debt Financing</b>	The State Board Staff could not determine from the documentation that has been provided if the \$1.5 million loan will be made should the Board approve this project.
<b>Criterion 1120.140 (c) – Reasonableness of Project Costs</b>	The Applicant has exceeded the State Board standard for Architectural & Engineering Fees.

**STATE BOARD STAFF REPORT**  
**Project #18-047**  
**Ophthalmology Surgery Center of Illinois, Itasca**

<b>APPLICATION/ CHRONOLOGY/SUMMARY</b>	
Applicants(s)	Ophthalmology Surgery Center of Illinois, LLC
Facility Name	Ophthalmology Surgery Center of Illinois
Location	1300 Arlington Heights Road, Itasca
Permit Holder	Ophthalmology Surgery Center of Illinois, LLC
Operating Entity/Licensee	Ophthalmology Surgery Center of Illinois, LLC
Owner of Site	Hamilton Partners, Inc.
Proposed Gross Square Feet	5,916 GSF
Application Received	December 3, 2018
Application Deemed Complete	December 5, 2018
Financial Commitment Date	April 30, 2020
Anticipated Completion Date	June 30, 2020
Review Period Ends	April 4, 2019
Review Period Extended by the State Board Staff?	Yes
Can the Applicants request a deferral?	Yes

**I. Project Description**

The Applicants (Ophthalmology Surgery Center of Illinois, LLC) propose to establish a limited-specialty ASTC in 5,916 GSF of leased space at a cost of \$3,975,093. The anticipated project completion date is June 30, 2020.

**II. Summary of Findings**

- A. State Board Staff finds the proposed project is **not** in conformance with all relevant provisions of Part 1110.
- B. State Board Staff finds the proposed project is **not** in conformance with all relevant provisions of Part 1120.

**III. General Information**

The Applicant is Ophthalmology Surgery Center of Illinois, LLC. Ophthalmology Surgery Center of Illinois is a limited liability company, organized in October 2018, and is 100% owned by Dr. Kevin Kovach, M.D. Dr. Kovach is currently affiliated with Kovach Eye Institute, a group of four Ophthalmologists with physician's offices in Elmhurst, Naperville, Chicago, and South Barrington. Dr. Kovach and his three colleagues, Dr. Mateen AliNiazee M.D., Dr. Saad Ahmad M.D., and Dr. Fatima Ali M.D. currently perform their surgical cases at area hospitals and ASTCs located within the services area.

#### **IV. Health Service Area**

The proposed ASTC will be located in the HSA VII Health Service Area. This service area consists of suburban Cook and DuPage counties. The geographic service area for this project is a 10-mile radius consisting of 17 zip codes with an approximate population of 1,221,512 residents (2016 census data) [See page 63 of the Application for Permit].

#### **V. Project Costs and Sources of Funds**

The Applicants are funding this project with cash in the amount of \$1,868,475, a mortgage in the amount of \$1,500,000, and leases with a fair market value of \$606,618. The estimated start-up costs and operating deficit is \$320,351.

<b>TABLE ONE</b>				
<b>Project Uses and Sources of Funds</b>				
Uses of Funds	Reviewable	Non reviewable	Total	% of Total
Site Preparation	\$18,672	\$10,328	\$29,000	.8%
Modernization Contracts	\$1,012,006	\$592,994	\$1,605,000	40.5%
Contingencies	\$53,439	\$29,561	\$83,000	2%
Architectural/Engineering Fees	\$127,184	\$59,291	\$186,475	4.6%
Consulting and Other Fees	\$120,481	\$44,519	\$165,000	4.2%
Movable or Other Equipment	\$845,000	\$285,000	\$1,130,000	28.4%
Fair Market Value of Leased Space/Equipment	\$390,569	\$216,049	\$606,618	15.3%
Other Costs to be Capitalized	\$85,000	\$85,000	\$170,000	4.2%
Total Uses of Funds	\$2,652,351	\$1,322,742	\$3,975,093	100.00%
Source of Funds				
Cash and Securities	\$1,296,011	\$572,464	\$1,868,475	47%
Leases (Fair Market Value)	\$390,569	\$216,049	\$606,618	15%
Mortgages/Bank Loan	\$975,771	\$534,229	\$1,500,000	38%
Total Sources of Funds	\$2,652,351	\$1,322,742	\$3,975,093	100%

#### **V. Background of the Applicants, Purpose of the Project, Safety Net Impact, Alternatives**

##### **A) Criterion 1110.110(a) - Background of the Applicant**

To address this criterion the applicants must provide a list of all facilities currently owned in the State of Illinois and an attestation documenting that no adverse actions<sup>1</sup> have been taken against any applicant's facility by either Medicare or Medicaid, or any State or Federal regulatory authority during the 3 years prior to the filing of the Application with the Illinois Health Facilities and Services Review Board or a certified listing of adverse action taken against any applicant's facility; and authorization to the State Board and Agency access to information in order to verify

<sup>1</sup> "Adverse action is defined as a disciplinary action taken by IDPH, CMMS, or any other State or federal agency against a person or entity that owns or operates or owns and operates a licensed or Medicare or Medicaid certified healthcare facility in the State of Illinois. These actions include, but are not limited to, all Type "A" and Type "AA" violations." (77 IAC 1130.140)

any documentation or information submitted in response to the requirements of the application for permit.

1. The Applicants do not currently own or operate any health care facilities in Illinois subject to this criterion. The Applicant has furnished authorization allowing the State Board and IDPH access to all information to verify information in the application for permit. [Application for Permit page 52]
2. Evidence of ownership of the site has been provided as required at pages 28-31 through a letter of intent for lease from Hamilton Partners, Inc. The proposed ASTC will be 100% owned by the applicant, and the organizational chart on page 35 of the Application for Permit supports this.
3. A Certificate of Good Standing for Ophthalmology Surgery Center of Illinois, LLC. has been provided as required. An Illinois Certificate of Good Standing is evidence that an Illinois business franchise (i.e. Illinois Corporation, LLC or LP) is in existence, is authorized to transact business in the state of Illinois, and complies with all state of Illinois business requirements and therefore is in "Good Standing" in the State of Illinois. [Application for Permit page 33]
4. The Applicants provided evidence that they were in compliance with Executive Order #2006-05 that requires *all State Agencies responsible for regulating or permitting development within Special Flood Hazard Areas shall take all steps within their authority to ensure that such development meets the requirements of this Order. State Agencies engaged in planning programs or programs for the promotion of development shall inform participants in their programs of the existence and location of Special Flood Hazard Areas and of any State or local floodplain requirements in effect in such areas. Such State Agencies shall ensure that proposed development within Special Flood Hazard Areas would meet the requirements of this Order.* [Application for Permit pages 36-37]
5. The proposed location of the facility is in compliance with the Illinois State Agency Historic Resources Preservation Act which requires *all State Agencies in consultation with the Director of Historic Preservation, institute procedures to ensure that State projects consider the preservation and enhancement of both State owned and non-State owned historic resources* (20 ILCS 3420/1). [Additional Information provided December 3, 2018]

#### **B) Criterion 1110.110(b) – Purpose of the Project**

To demonstrate compliance with this criterion the Applicants must document that the project will provide health services that improve the health care or well-being of the market area population to be served. The Applicants shall define the planning area or market area, or other area, per the applicant's definition. The Applicants shall address the purpose of the project, i.e., identify the issues or problems that the project is proposing to address or solve. Information to be provided shall include, but is not limited to, identification of existing problems or issues that need to be addressed, as applicable and appropriate for the project.

The Applicants stated: *“The proposed surgery center will improve access to ophthalmology surgical services to residents in the northwestern Chicago suburbs, particularly low-income*

*residents on Medicaid. There are 8 hospitals and 18 ASTCs within ten miles of the proposed surgery center. Area hospitals are not feasible as they are less efficient and a higher cost setting for patients. Further, the proposed surgery center will perform ophthalmology surgical procedures that require specialized equipment. Of the 18 ASTCs in the geographic service area, only 4 ASTCs perform ophthalmology and laser eye procedures. Two of the surgery centers do not accept Medicaid. While the remaining ASTCs provide a limited amount of Medicaid care, they have closed medical staffs. The proposed surgery center will allow the physicians of Kovach Eye Institute a location where their Medicaid patients can receive surgical treatment for their vision problems.”*

### **C) Criterion 1110.110 (c) Safety Net Impact**

**All health care facilities, with the exception of skilled and intermediate long term care facilities licensed under the Nursing Home Care Act, shall provide a safety net impact statement, which shall be filed with an application for a substantive project (see Section 1110.40). Safety net services are the services provided by health care providers or organizations that deliver health care services to persons with barriers to mainstream health care due to lack of insurance, inability to pay, special needs, ethnic or cultural characteristics, or geographic isolation. [20 ILCS 3960/5.4]**

*This is a substantive project. A safety net impact statement is required and has been provided on page 111 of the Application for Permit. According to the Applicants: “The proposed project is limited to the establishment of an ASTC. Due to the nature of the ASTC, it is not anticipated that a substantial amount of safety net services will be provided in the proposed surgery center. The establishment of the surgery center, however, will have no negative impact on the provision of the safety net services by area hospitals, and its long standing commitment to the provision of those services will continue. Further, the moving of surgical cases from area hospital’s surgical suites to the proposed Surgery Center will improve access to surgical services at area hospitals, as a result of the shorter waiting times in scheduling of elective surgery, including procedures performed on Medicaid recipients, or on a charity care basis. The proposed project is not anticipated to have any impact on the cross-subsidizing of safety net services between the proposed Surgery Center and any other facility.”*

### **D) Criterion 1110.110 (d) - Alternatives to the Proposed Project**

**To demonstrate compliance with this criterion the Applicants must document that the proposed project is the most effective or least costly alternative for meeting the health care needs of the population to be served by the project.**

The Applicants considered two alternatives to the proposed project.

The first alternative was to maintain status quo and do nothing. This would mean the Applicant continue to perform Ophthalmologic surgical procedures in an office based environment, or in area ASTCs/hospital outpatient surgery suites. The Applicants rejected this alternative, citing the need to increase access to Ophthalmologic surgical services for low income and charity care patients. There were no project costs identified with this alternative.

The second alternative considered was to utilize existing facilities. The Applicant notes there are currently 8 hospitals and 18 ASTCs within a 10-mile radius of the proposed surgery center. The Applicants further notes the hospitals have higher cost structures for its patient base, and often do not contain the specialized equipment necessary for

Ophthalmologic procedures. The Applicants also notes that of the 18 ASTCs identified, only 4 provide Ophthalmology and laser eye procedures, making it difficult to schedule surgery time. Furthermore, two of the four ASTCs providing Ophthalmologic surgery services do not accept Medicaid patients, and the remaining two facilities have closed medical staffs. Based on the assertions, this option was rejected. No costs were identified with this option.

The third and chosen option was to establish a new ASTC with two surgical suites and eight recovery stations. This option was viewed as most conducive to the needs of the Ophthalmologic clinicians in the service area, and the Medicaid patient population. Cost of this alternative: \$3,975,093.

## **VI. Project Scope and Size, Utilization and Unfinished/Shell Space**

### **A) Criterion 1110.120 (a) - Size of Project**

To demonstrate compliance with this criterion the Applicants must document that that the physical space proposed for the project is necessary and appropriate. The proposed square footage cannot deviate from the square footage range indicated in Appendix B, or exceed the square footage standard in Appendix B if the standard is a single number, unless square footage can be justified by documenting, as described in subsection (a)(2).

The Applicant is proposing two operating rooms and eight recovery stations in 3,809 GSF of reviewable space for the surgery center.

The State Board Standard for operating rooms is 2,200 DGSF per room. The State Board does not have a gross square footage standard for recovery rooms in an ASTC. The Applicants are proposing two operating rooms and eight recovery rooms for a total of 3,809 GSF of clinical space. The State Standard is 4,400 GSF of clinical space. The Applicants have successfully addressed this criterion.

<b>TABLE TWO</b>				
<b>Cost/Space Requirements</b>				
Department	Cost	Proposed GSF	State Standard GSF	Difference
ASTC/Recovery	\$2,652,351	3,809	4,400	-189 GSF
Total Reviewable	\$2,652,351	3,809		
Non reviewable				
Administrative	\$1,322,742	2,107	No Standard	
Total	\$3,975,093	5,916		

### **B) Criterion 1110.120(b) - Project Services Utilization**

To demonstrate compliance with this criterion the Applicants must document that, by the end of the second year of operation, the annual utilization of the clinical service areas or equipment shall meet or exceed the utilization standards specified in Appendix B. The number of years projected shall not exceed the number of historical years documented. All Diagnostic and Treatment utilization numbers are the minimums per unit for establishing more than one unit, except where noted in 77 Ill. Adm. Code 1100. [Part 1110 Appendix B]



Projected volume for the surgery center is based upon the physician referral letter of Dr. Kevin Kovach M.D., of the Kovach Eye Institute. The referral letter documents the patient volume for Dr. Kovach and his three physician associates for the most recent calendar year. The referral letter affirms the referral of 2,096 patients, and it is anticipated that 2,096 patients will utilize the Ophthalmology Surgery Center of Illinois for each of the two years following project completion (application, p. 114)

The State Board standard for operating/procedure rooms is 1,500 hours per operating/procedure room. The State Board Standard for recovery rooms is four recovery rooms per operating/procedure room. If the referrals materialize the Applicants can justify the two surgical rooms and eight recovery rooms.

**C) Assurances**

To document compliance with this criterion the Applicants representative who signs the CON application shall submit a signed and dated statement attesting to the applicant's understanding that, by the end of the second year of operation after project completion, the Applicants will meet or exceed the utilization standards specified in Appendix B.

The Applicant provided the necessary assurance as required.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT TO BE IN CONFORMANCE WITH CRITERION SIZE OF THE PROJECT, PROJECTED UTILIZATION, ASSURANCES (77 ILAC 1110.120 (a) (b) (e))**

**VII. Non-Hospital Based Ambulatory Surgical Treatment Center Services**

**A) Criterion 1110.235 (c) (1) - Introduction**

Ambulatory Surgical Treatment Centers required to be licensed pursuant to the Ambulatory Surgical Treatment Center Act are defined as health care facilities subject to the requirements of the Illinois Health Facilities Planning Act and HFSRB rules (77 Ill. Adm. Code 1100, 1110, 1120 and 1130). Facilities devoted to abortion and related care, including those licensed as PSTCs under the ASTC Act are not subject to HFSRB rules related to Non-Hospital Based ASTCs. The addition of any other ASTC services (other than abortion-related services) will require a CON permit.

**B) Criterion 1110.235 (c) (2) - Geographic Service Area Need**

To demonstrate compliance with this criterion the Applicants must document that the ASTC services and the number of surgical/treatment rooms to be established, added or expanded are necessary to serve the planning area's population, based on the following:

**A) 77 Ill. Adm. Code 1100 (Formula Calculation)**

As stated in 77 Ill. Adm. Code 1100, no formula need determination for the number of ASTCs and the number of surgical/treatment rooms in a

geographic service area has been established. Need shall be established pursuant to the applicable review criteria of this Part.

**B) Service to Geographic Service Area Residents**

The applicant shall document that the primary purpose of the project will be to provide necessary health care to the residents of the geographic service area (GSA) in which the proposed project will be physically located.

i) The applicant shall provide a list of zip code areas (in total or in part) that comprise the GSA. The GSA is the area consisting of all zip code areas that are located within the established radii outlined in 77 Ill. Adm. Code 1100.510(d) of the project's site.

ii) The applicant shall provide patient origin information by zip code for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the GSA. Patient origin information shall be based upon the patient's legal residence (other than a health care facility) for the last 6 months immediately prior to admission.

The geographic service area for an ASTC located in Itasca, Illinois is a 10 mile radius. This service area consists of 17 zip codes with an approximate population of 1,246,650 residents. The Applicants provided patient origin information for Kovach Eye Institute in the referral letter for the previous calendar year (224 zip codes) which shows 725 (34.6%) of the patients identified by this criterion will reside within this 10-mile radius. [See pages 62-70 of the Application for Permit]. The Applicants have not successfully addressed this criterion.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS NOT IN CONFORMANCE WITH GEOGRAPHIC SERVICE AREA (77 ILAC 1110.235 (c) (2))**

**C) Criterion 1110.235(c)(3) - Service Demand – Establishment of an ASTC Facility**

To demonstrate compliance with this criterion the Applicants must document that the proposed project is necessary to accommodate the service demand experienced annually by the applicant, over the latest 2-year period, as evidenced by historical and projected referrals. The applicant shall document the information required by subsection (c)(3) and either subsection (c)(3)(B) or (C):

The Applicants provided a referral letter from Dr. Kevin Kovach, M.D. of the Kovach Eye Institute. In the letter (application, p. 114) Dr. Kovach and his three physician-associates documented the number of surgical cases performed in the previous calendar year, as well as the number of cases they intend to perform at the proposed surgery center. The referral letter contained in the Application for Permit is in compliance with the State Board requirements for referral letters. As referenced above 77 ILAC 1110.120 (b) there is sufficient volume to justify the number of operating/procedure rooms proposed by this project.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT TO BE IN CONFORMANCE WITH CRITERION SERVICE DEMAND (77 ILAC 1110.235(c)(3))**

**D) Criterion 1110.235(c)(5) - Treatment Room Need Assessment**

A) To demonstrate compliance with this criterion the Applicants must document that the proposed number of surgical/treatment rooms for each ASTC service is necessary to service the projected patient volume. The number of rooms shall be justified based upon an annual minimum utilization of 1,500 hours of use per room, as established in 77 Ill. Adm. Code 1100.

B) For each ASTC service, the applicant shall provide the number of patient treatments/sessions, the average time (including setup and cleanup time) per patient treatment/session, and the methodology used to establish the average time per patient treatment/session (e.g., experienced historical caseload data, industry norms or special studies).

As stated above at 1110.120(b), the Applicants have provided sufficient referral information to justify the two operating rooms and eight recovery stations at this surgery center.

TABLE THREE Treatment Room Need Assessment			
Operating Rooms	Treatments	Ave. Time	Total
Specialties			
Ophthalmology	2,096	0.75	1,572 hrs.
Total	2,096		1,572 hrs.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT TO BE IN CONFORMANCE WITH CRITERION TREATMENT ROOM NEED ASSESSMENT (77 ILAC 1110.235(c)(5))**

**E) Criterion 1110.235(c)(6) - Service Accessibility**

To demonstrate compliance with this criterion the proposed ASTC services being established or added are necessary to improve access for residents of the GSA. The applicant shall document that at least one of the following conditions exists in the GSA:

A) There are no other IDPH-licensed ASTCs within the identified GSA of the proposed project;

B) The other IDPH-licensed ASTC and hospital surgical/treatment rooms used for those ASTC services proposed by the project within the identified GSA are utilized at or above the utilization level specified in 77 Ill. Adm. Code 1100;

C) The ASTC services or specific types of procedures or operations that are components of an ASTC service are not currently available in the GSA or that existing underutilized services in the GSA have restrictive admission policies;

D) The proposed project is a cooperative venture sponsored by 2 or more persons, at least one of which operates an existing hospital. Documentation shall provide evidence that:

i) The existing hospital is currently providing outpatient services to the population of the subject GSA;

ii) The existing hospital has sufficient historical workload to justify the number of surgical/treatment rooms at the existing hospital and at the proposed ASTC, based upon the treatment room utilization standard specified in 77 Ill. Adm. Code 1100;

iii) The existing hospital agrees not to increase its surgical/treatment room capacity until the proposed project's surgical/treatment rooms are operating at or above the utilization rate specified in 77 Ill. Adm. Code 1100 for a period of at least 12 consecutive months; and

iv) The proposed charges for comparable procedures at the ASTC will be lower than those of the existing hospital.

- i) This project is considered a continuance of the existing practice of Kovach Eye Institute. Dr. Kevin Kovach, M.D. and three physician-associates have referred their patient base (2,096 cases), to various hospitals and ASTCs in the service area, and through this application, propose to provide a full continuum of Ophthalmology surgical care at one centralized location.
- ii) There are currently eight hospitals and 18 ASTCs in the service area. The eight area hospitals are considered to be less efficient and are a higher cost setting for patients. Of the 18 ASTCs in the service area, only four perform Ophthalmology surgical procedures. Of these four remaining ASTCs, two have closed surgical staffs, and the remaining two do not accept Medicaid. State Board Staff reports contradictory data that shows there are actually eight ASTCs in the service area that report performing Ophthalmologic surgeries in 2017, with six accepting Medicaid patients, and seven of the eight facilities operating beneath the State standard.
- iii) While the applicants have no historical charity care data to report from Kovach Eye Institute, it is proposed that the applicants intend to provide its services to its Medicaid/Charity Care patient base in an effort to meet an underserved population.

The Applicants do not meet all of the requirements of this criterion. Based upon the information reviewed by the State Board Staff regarding the absence of facilities available to provide Ophthalmologic Charity Care/Medicaid services, the proposed ASTC will be duplicative of existing facilities providing identical services.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS NOT IN CONFORMANCE WITH SERVICE ACCESSIBILITY (77 ILAC 1110.235 (c) (6))**

**F) Criterion 1110.235 (c) (7) - Unnecessary Duplication/Mal-distribution**

- A) To demonstrate compliance with this criterion the Applicants must document that the project will not result in an unnecessary duplication. The applicant shall provide the following information for the proposed GSA zip code areas identified in subsection (c) (2) (B) (i):
  - i) the total population of the GSA (based upon the most recent population numbers available for the State of Illinois); and
  - ii) the names and locations of all existing or approved health care facilities located within the GSA that provide the ASTC services that are proposed by the project.
- B) The applicant shall document that the project will not result in maldistribution of services. Maldistribution exists when the GSA has an excess supply of facilities and ASTC services characterized by such factors as, but not limited to:
  - i) a ratio of surgical/treatment rooms to population that exceeds one and one-half times the State average;
  - ii) historical utilization (for the latest 12-month period prior to submission of the application) for existing surgical/treatment rooms for the ASTC services proposed by

the project that are below the utilization standard specified in 77 Ill. Adm. Code 1100;  
or  
iii) insufficient population to provide the volume or caseload necessary to utilize the surgical/treatment rooms proposed by the project at or above utilization standards specified in 77 Ill. Adm. Code 1100.

- C) The applicant shall document that, within 24 months after project completion, the proposed project:
- i) will not lower the utilization of other area providers below the utilization standards specified in 77 Ill. Adm. Code 1100; and
  - ii) will not lower, to a further extent, the utilization of other GSA facilities that are currently (during the latest 12-month period) operating below the utilization standards.

The population within the GSA in Illinois is 1,221,512. The ratio of operating/procedure rooms per 1,000 population is .19 within this GSA [239 operating/procedure rooms ÷ (1,221,512/1,000 or 1,221.5) = .19]. The ratio of operating/procedure rooms per 1,000 population in the State of Illinois is .041 [526 operating/procedure rooms ÷ (12,978,800/1,000 or 12,978.8)].

There are eighteen ASTCs within the 10-mile GSA with seventy-two operating/procedure rooms. The applicant reports only four provide the surgical specialties (Ophthalmology/Laser Eye). However, data in the 2017 IDPH ASTC Profile identifies eight. The applicant notes that of the four facilities they identified as providing Ophthalmologic surgery, two have closed staffs, and the other two do not accept Medicaid/Charity Care. State Board Staff notes the 2017 IDPH ASTC survey reveals that eight ASTCs in the service area provide Ophthalmologic surgical services, six of the facilities accept Medicaid patients, and 7 report having excess surgical capacity (See Table Seven).

There are eight hospitals within the 10-mile GSA. None are at the target occupancy of 1,500 hours per operating/procedure room. The Applicants state *“that the hospitals are not being considered in the proposed application because third-party payors are requiring an increasing number of outpatient surgical procedures to be moved to ASTCs, rather than being performed on an outpatient basis in a hospital. They will not cover an increasing number of procedures when they are performed in a hospital, even when the procedures are performed on an outpatient basis.”*

The Applicant’s attestation of Ophthalmology patients and Medicaid patients being the variance to this criterion of duplication and maldistribution are inaccurate. Data contained in the 2017 IDPH ASTC survey proves otherwise, and Table Seven illustrates the existence of eight ASTCs in the service area providing Ophthalmologic surgical services, six of these facilities accepting Medicaid patients, and 7 reporting to having excess surgical capacity. A negative finding results.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT TO NOT BE IN CONFORMANCE WITH UNNECESSARY DUPLICATION MALDISTRIBUTION OF SERVICE (77 ILAC 1110.235 (c) (7))**

**G) Criterion 1110.235(c)(8) - Staffing**

**A) Staffing Availability**

The applicant shall document that relevant clinical and professional staffing needs for the proposed project were considered and that the staffing requirements of licensure and The Joint Commission or other nationally recognized accrediting bodies can be met. In addition, the applicant shall document that necessary staffing is available by providing letters of interest from prospective staff members, completed applications for employment, or a narrative explanation of how the proposed staffing will be achieved.

**B) Medical Director**

It is recommended that the procedures to be performed for each ASTC service are under the direction of a physician who is board certified or board eligible by the appropriate professional standards organization or entity that credentials or certifies the health care worker for competency in that category of service.

The staffing of the proposed ASTC is explained at page 78 of the Application for Permit and the Applicant believes the staffing requirements of IDPH licensing and accreditation agencies can be met. Dr. Kevin Kovach, M.D., will be the Medical Director of Ophthalmology Surgery Center of Illinois, LLC.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION STAFFING (77 IAC 1110.235(c)(8)).**

**H) Criterion 1110.235(c)(9) - Charge Commitment**

In order to meet the objectives of the Act, which are *to improve the financial ability of the public to obtain necessary health services; and to establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public; and cost containment and support for safety net services must continue to be central tenets of the Certificate of Need process* [20 ILCS 3960/2], the applicant shall submit the following:

- A)** a statement of all charges, except for any professional fee (physician charge); and
- B)** a commitment that these charges will not increase, at a minimum, for the first 2 years of operation unless a permit is first obtained pursuant to 77 Ill. Adm. Code 1130.310(a).

Information regarding charges has been provided at pages 79-81 of the Application for Permit and the Applicants have committed that these charges will not increase, at a minimum for the first 2 years of operation unless a permit is first obtained. (See Application for Permit Page 81) (Charges for Ophthalmology Surgery center of Illinois, LLC can be found on page 80)

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION CHARGE COMMITMENT (77 IAC 1110.235(c)(9)).**

**I) Criterion 1110.235(c)(10) - Assurances**

- A)** The applicant shall attest that a peer review program exists or will be implemented that evaluates whether patient outcomes are consistent with quality standards established by professional organizations for the ASTC services, and if outcomes do not meet or exceed those standards, that a quality improvement plan will be initiated.

**B) The applicant shall document that, in the second year of operation after the project completion date, the annual utilization of the surgical/treatment rooms will meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures that would increase utilization.**

The Applicants have provided the necessary attestation that a peer review will be implemented for the proposed surgery center and that the proposed surgery center in the second year of operation after project completion date will meet or achieve target utilization.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION ASSURANCES (77 IAC 1110.235(c) (10)).**

## **IX. Financial Viability**

### **A) Criterion 1120.120 – Availability of Funds**

To demonstrate compliance with this criterion the Applicants must document that resources are available to fund the project.

The Applicants are funding this project with cash in the amount of \$1,868,475, a mortgage in the amount of \$1,500,000, and the fair market value of leases totaling \$606,618. The Applicant also supplied a letter from CIBC Bank, Oak Brook, attesting to a solid financial history with the Applicant, and a willingness to lend up to \$1,500,000 for the mortgage portion of the project costs.

#### **Staff Analysis**

The Applicants provided a compilation report that included a projected income statement, balance sheet and cash flow statement for the surgery center. However, the compilation report did not include an evaluation of the assumptions used nor did the CPA provide any assurance. The letter from the Bank did not include a statement stating that if the certificate of need is approved the loan will be made. The Applicants have not the requirements of this criterion.

The Applicants projected financial statements are illustrated in Table Four.

<b>TABLE FOUR</b>		
<b>Pro Forma Financial Statement</b>		
<b>Ophthalmology Surgery Center of Illinois, LLC</b>		
	<b>Year One</b>	<b>Year Two</b>
Cash	\$370,756	\$653,016
Current Assets	\$721,625	\$1,038,971
Total Assets	\$2,996,675	\$3,105,072
Current Liabilities	\$242,696	\$250,407
Total Liabilities	\$2,996,675	\$3,105,072

<b>TABLE FOUR</b> <b>Pro Forma Financial Statement</b> <b>Ophthalmology Surgery Center of Illinois, LLC</b>		
	Year One	Year Two
Patient Service Revenue	\$2,806,950	\$3,087,645
Total Revenue	\$2,806,950	\$3,807,645
Expenses	\$1,805,462	\$1,754,524
Excess of Revenues over Expenses	\$792,539	1,124,172

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS NOT IN CONFORMANCE WITH CRITERION AVAILABILITY OF FUNDS (77 IAC 1120.120).**

**B) Criterion 1120.130 - Financial Viability**

To demonstrate compliance with this criterion the Applicants must document an “A” or better bond rating or provide 3 years of historical financial ratios as required by the State Board or qualify for the financial waiver.

The Applicant has submitted projected financial viability ratios for 2021 (the second year after project completion). The Applicants are in compliance with the requirements of this criterion.

<b>TABLE FIVE</b> <b>Ophthalmology Surgery Center of Illinois, LLC</b> <b>Projected Financial Viability Ratios</b>		
	State Board Standard	2021
Current Ratio	>1.5	4.15
Net Margin %	>3.5%	36%
LTD to Capitalization	<80%	43%
Projected Debt Service Coverage	>1.75	6.82
Days Cash on Hand	>45	136
Cushion Ratio	>3.0	3.12

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION FINANCIAL VIABILITY (77 IAC 1120.130).**



## **X. Economic Feasibility**

### **A) Criterion 1120.140(a) –Reasonableness of Financing Arrangements**

To demonstrate compliance with this criterion the Applicants must document an “A” or better bond rating or attest to the following

- 1) That the total estimated project costs and related costs will be funded in total with cash and equivalents, including investment securities, unrestricted funds, received pledge receipts and funded depreciation; or
- 2) That the total estimated project costs and related costs will be funded in total or in part by borrowing because:
  - A) A portion or all of the cash and equivalents must be retained in the balance sheet asset accounts in order to maintain a current ratio of at least 2.0 times for hospitals and 1.5 times for all other facilities; or
  - B) Borrowing is less costly than the liquidation of existing investments, and the existing investments being retained may be converted to cash or used to retire debt within a 60-day period.

### **B) Criterion 1120.140(b) – Conditions of Debt Financing**

To demonstrate compliance with this criterion the Applicants must document that the conditions of debt financing are reasonable by submitting a notarized statement signed by an authorized representative that attests to the following, as applicable:

- 1) That the selected form of debt financing for the project will be at the lowest net cost available;
- 2) That the selected form of debt financing will not be at the lowest net cost available, but is more advantageous due to such terms as prepayment privileges, no required mortgage, access to additional indebtedness, term (years), financing costs and other factors;
- 3) That the project involves (in total or in part) the leasing of equipment or facilities and that the expenses incurred with leasing a facility or equipment is less costly than constructing a new facility or purchasing new equipment.

The Applicant supplied a letter committing to the lending of up to \$1,500,000 from CIBC Bank (see project file), complete with terms of repayment, and interest rates. However, the letter did not state that if the certificate of need is approved the loan will be made. The Act requires the Board to determine if the Applicants have “financial resources to adequately provide a proper service for the community.” The Board Staff finds the Applicant not in conformance with these criteria.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION REASONABLENESS OF PROJECT FINANCING TERMS OF DEBT FINANCING (77 IAC 1120.140 (a) (b)).**

### **C) Criterion 1120.140 (c) – Reasonableness of Project Costs**

To demonstrate compliance with this criterion the Applicants must document that the estimated project costs are reasonable and shall document compliance

Only reviewable/clinical project costs are subject to State Board review. The State Board does not have a standard for offsite work, consulting costs, equipment costs and net interest during construction. Itemization of all costs are presented below. 2019 is considered the midpoint of the construction for this project. Itemization of all costs can be found at pages 107-108 of the Application for Permit.

The State Board Standard for the construction and contingency costs of an ASTC is based upon previously approved ASTC projects based upon 2015 data and inflated to the midpoint of construction. Moveable Equipment not in construction contracts for an ASTC is based upon 2008 data and inflated by 3% to the midpoint of construction. [See Appendix 1120 Appendix]

Only Clinical Costs are reviewed in this criterion. The clinical gross square footage for modernization is 3,809 GSF.

**Site Preparation** – These costs total \$18,672, which is 1.7% of the modernization and contingencies costs (\$1,065,445). This appears reasonable compared to the State standard of 5%.

**Modernization and Contingencies** – These costs total \$1,065,445 or \$279.71 GSF. ( $\$1,065,445 / 3,809 = \$415.45$ ). This appears **reasonable** when compared to the State Board Standard of \$281.00/GSF [2019 mid-point of construction].

**Contingencies** – These costs total \$53,439 and are 5.3% of modernization costs. This appears reasonable when compared to the State Board Standard of 10-15%.

**Architectural and Engineering Fees** – These costs total \$127,184 and are 11.9% of modernization and contingencies (\$1,065,445). These costs appear **high** when compared to the State Board Standard of 7.776% - 11.66%.

**Consulting and Other Fees** – These costs are \$120,481. The State Board does not have a standard for these costs.

**Movable Equipment** – These costs total \$845,000. The State Board Standard is \$489,744.71 per operating room ( $\$489,744.71 \times 2 = \$979,489.42$ ). The Applicant proposes to establish two operating rooms, which meets the requirements for this criterion.

**Fair Market Value of Leased Space and Equipment** – These costs total \$390,569. The State Board does not have a standard for these costs.

**Other Costs to be Capitalized** – These costs total \$85,000. The State Board does not have a standard for these costs.

The Applicant has exceeded the State Board standard for Architectural and Engineering fees, and a negative finding results for this criterion.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS NOT IN CONFORMANCE WITH CRITERION THE REASONABLENESS OF PROJECT COSTS (77 IAC 1120.140(c)).**

**D) Criterion 1120.140(d) – Projected Direct Operating Costs**

To document compliance with this criterion the Applicants must document the projected direct annual operating costs (in current dollars per equivalent patient day or unit of service) for the first full fiscal year at target utilization but no more than two years following project completion. Direct costs mean the fully allocated costs of salaries, benefits and supplies for the service.

The Applicant is estimating \$426.65 in direct operating costs per surgical case by the second year after project completion. The State Board does not have a standard for this criterion.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION PROJECTED DIRECT OPERATING COSTS (77 ILAC 1120.140(d))**

**E) Criterion 1120.140(e) – Total Effect of the Project on Capital Costs**

To document compliance with this criterion the Applicants must document the total projected annual capital costs (in current dollars per equivalent patient day) for the first full fiscal year at target utilization but no more than two years following project completion.

The Applicant is estimating \$99.69 in capital costs per surgical case by the second year after project completion. The State Board does not have a standard for this criterion.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION PROJECTED TOTAL EFFECT OF THE PROJECT ON CAPITAL COSTS (77 ILAC 1120.140(e))**

**TABLE SEVEN**

**Facilities in the 10-Mile Travel Radius of Proposed Facility**

Facility	City	Type	Distance	OR/Procedure Rooms	Hours	Medicaid	Medicare	Met Standard? <sup>(1)</sup>
ASTC								
<b>Advantage Health Care, Ltd.&gt;</b>	Wood Dale	Single>	2.3	2	1,731	N	N	Y
<b>Aiden Center for Day Surgery, LLC</b>	Addison	Multi	3	4	525	N	Y	N
<b>Illinois Hand &amp; Upper Extremity</b>	Arlington Heights	Single	4.1	1	1,298	N	N	Y
<b>Northwest Endoscopy Ctr.&lt;</b>	Arlington Heights	Single	4.9	2	1,981	N	Y	Y
<b><u>Northwest Surgicare Ltd</u></b>	<u>Arlington Heights</u>	<u>Multi</u>	<u>5.4</u>	<u>4/2</u>	<u>3,410/28</u>	<u>Y</u>	<u>Y</u>	<u>N/N</u>
<b><u>Northwest Community Day Surgery</u></b>	<u>Arlington Heights</u>	<u>Multi</u>	<u>5.6</u>	<u>10</u>	<u>10,480</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<b>Schaumburg Surgery Center, LLC#</b>	Schaumburg	Multi	6.7	2	N/A	N/A	N/A	N
<b>Uropartners Surgery Center, LLC</b>	Des Plaines	Limited	7.1	3	49.5	N	N	N
<b><u>Loyola Surgery Center</u></b>	<u>Oakbrook Terrace</u>	<u>Multi</u>	<u>7.2</u>	<u>3</u>	<u>4,449</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<b>Presence Lakeshore Gastroenterology&lt;</b>	Des Plaines	Single	7.3	2	.85	N	N	N
<b>Northwest Community Foot &amp; Ankle</b>	Des Plaines	Limited	7.4	3	405	N	Y	N
<b><u>Hoffman Estates Surgery Center, LLC</u></b>	<u>Hoffman Estates</u>	<u>Multi</u>	<u>8.2</u>	<u>4/2</u>	<u>3,005/869</u>	<u>N</u>	<u>Y</u>	<u>N/N</u>
<b>Associated Surgical Center</b>	Arlington Heights	Multi	8.7	3	466	N	Y	N
<b>OrthoTec Surgery Center, Inc^</b>	Elmhurst	Single	9	1	242	N	Y	Y
<b><u>DuPage Eye Surgery Center*</u></b>	<u>Wheaton</u>	<u>Single</u>	<u>9</u>	<u>4/2</u>	<u>2,574/303</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<b><u>LGH-A/Golf ASTC, LLC</u></b>	<u>Des Plaines</u>	<u>Multi</u>	<u>9.2</u>	<u>5/2</u>	<u>4,399/981</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<b><u>Elmhurst Outpatient Surgery Center</u></b>	<u>Elmhurst</u>	<u>Multi</u>	<u>9.3</u>	<u>4/4</u>	<u>4,206/3.0</u>	<u>N</u>	<u>Y</u>	<u>N/N</u>
<b><u>Oak Brook Surgical Centre*</u></b>	<u>Oak Brook</u>	<u>Multi</u>	<u>9.9</u>	<u>5</u>	<u>1,668</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<b>#Facility under construction or in ramp-up phase</b>								

>Provides Gynecology Procedures exclusively

\*Provides Ophthalmology Surgery

^Provides Podiatric Procedures exclusively

Underlined facilities represent ASTCs reporting to have provided Ophthalmology surgical services in 2017

**TABLE SEVEN (continued)**  
**HOSPITALS WITHIN 10 MILES OF PROPOSED PROJECT**

Facility	City	Distance	OR/Procedure Rooms	Hours	Medicaid	Medicare	Utilization Met?
<b>Alexian Brothers Medical Ctr.</b>	Elk Grove Villa	1.2	15/10	26,024/11,275	Y	Y	Y/N
<b>Northwest Community Hospital</b>	Arlington Heights	5.4	14/9	18,912/10,796	Y	Y	N/N
<b>Adventist Glen Oaks Hospital</b>	Glendale Heights	5.9	4/3	3,080/1,355	Y	Y	N/N
<b>Presence Holy Family Medical Center</b>	Des Plaines	7.5	5/5	1,336/568	Y	Y	N/N
<b>St Alexius Medical Ctr.</b>	Hoffman Estates	8.3	15/6	21,360/8,970	Y	Y	Y/Y
<b>Advocate Lutheran General Hospital</b>	Perk Ridge	8.7	26/9	42,679/13,570	Y	Y	Y/Y
<b>Elmhurst Memorial Hospital</b>	Elmhurst	9.5	15/6	20,885/6,806	Y	Y	N/N
<b>Presence Resurrection Medical Center</b>	Chicago	9.8	13/5	11,376/5,165	Y	Y	N/N
Travel time determined using formula in 77IAC 1100.510 (d) Data taken from CY 2017 Hospital/ASTC Profiles NA – information not available							

# 18-047 Ophthalmology Surgery Center of Illinois - Itasca

