

**NEW YORK STATE DEPARTMENT OF HEALTH**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**  
**SPECIAL ESTABLISHMENT AND PROJECT REVIEW COMMITTEE MEETING**  
**FEBRUARY 9, 2023 10:00 AM**  
**ESP, CONCOURSE LEVEL, MEETING ROOM 6 ALBANY**  
**90 CHURCH STREET, 4TH FLOOR, CONFERENCE ROOMS 4A AND 4B, NYC**  
**TRANSCRIPT**

**Mr. Robinson** Good morning, everyone. Welcome to this special meeting of the Establishment and Project Review Committee. We have a few applications to consider this morning and we'll get right into it. First calling application 2 1 2 1 1 7 E, Livingston Operations LLC doing business as Livingston Hills Nursing and Rehabilitation Center. This is in Columbia County to establish Livingston Operators LLC as the new operator of Livingston Hills Nursing and Rehabilitation Center, which is a 120-bed residential health care facility at 2781 Route 9 in Livingston. The department is recommending approval with contingencies.

**Mr. Robinson** May I have a motion?

**Mr. Robinson** Thank you, Dr. Berliner.

**Mr. Robinson** A second?

**Mr. Robinson** Mr. Thomas.

**Mr. Robinson** Mark, are you going to do this one?

**Mr. Furnish** Hello, everyone. I'm Mark Furnish. I'm with the Department of Health. This is Livingston Health Nursing and Rehabilitation Center. The applicant is proposing to be established as the operator of the current Livingston Hill Nursing and Rehab Center. Upon approval, the facility will continue to be known as Livingston Hills Nursing and Rehab. The landlord, K.R. Livingston Realty LLC and the tenant Livingston Operations LLC entered the proposed lease for site control of the facility. The applicant acknowledges that there is a relationship between the entities and that the individuals have an ownership interest in both the operating entity and the real estate entity. Applicants have submitted an affidavit attesting to the relationship between the landlord and the operating entity. Historical occupancy data shows the declining numbers since 2016. However, recently, self-reported occupancy numbers indicate a dramatic increase to 95.8%. There will be no change in beds or services as a result of this application. It passes the 40% test and the long term care approved. Therefore, the department recommends approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Any questions from members of the committee or the rest of the council?

**Mr. Robinson** Mr. La Rue.

**Mr. La Rue** Good morning. Scott La Rue, member of the council? Just for the point of clarification for the committee, the 40% rule that was put into effect if you have five or more nursing homes? As I understand it, when we discussed that, we put that in place because we felt it would be unfair for somebody who owned less than five nursing homes to have a bad survey and then suddenly be disqualified by a single incident that occurred. In the

case of this application, they meet the 40%, but that's because they own less than five nursing homes.

**Mr. Furnish** Now, I will say that when we say it passes of 40% and you articulated it perfectly. We then go into 600.2 of the regulations, which lists a consistent high level of care. There are seven or eight different factors that you can look at when approving this. I could read them off to you if you'd like all the lengthy list of things that you need to consider.

**Mr. La Rue** Not necessary for me. I just want to make sure we level set it before I ask the applicant any questions.

**Mr. Furnish** It becomes a judgement call based on the criteria set 600.2.

**Mr. La Rue** If they have less than five, it's really a subjective determination by the committee?

**Mr. Furnish** Correct.

**Mr. La Rue** Thank you.

**Mr. Robinson** Mr. La Rue, would you like to ask questions of the applicant?

**Mr. La Rue** I would.

**Mr. Robinson** Could we ask the applicant to come forward?

**Mr. Robinson** Good morning. Could you please introduce yourself and your colleagues?

**Mr. Blatt** Sure.

**Mr. Blatt** Good morning. Andrew Blatt, Consultant, Clinical Health Consultants.

**Mr. Koschitzki** Good morning. Jack Koschitzki, CEO of Livingston Hills Nursing Home.

**Ms. Moss** Rene Moss, Regional Director of Nursing for Hudson Wide.

**Mr. Robinson** Thank you.

**Counsel for the Applicant** Counsel for the applicant.

**Mr. Robinson** Mr. La Rue, go ahead.

**Mr. La Rue** Thank you.

**Mr. La Rue** Good morning. Looking at the application, you have an ownership interest in two homes: Renaissance Rehabilitation and the Eleanor Care for Center. The Eleanor, which is currently or at the time of its application, a one-star facility you had owned since 2016. The Renaissance Rehabilitation, which is two stars.

**Mr. Robinson** Could you please put the microphone and make sure it's on?

**Mr. Robinson** Thank you.

**Mr. La Rue** You've owned since 2015.

**Applicant** Correct.

**Mr. La Rue** I'm just interested because you have these facilities, and we recognized the pandemic was in 2020. Since four years prior to the pandemic or five years. The star ratings are one star and two star.

**Applicant** I'm officially walked into Eleanor in January of 2017. At that point, it was a special focus facility. By the end of 2018, that building was a four-star facility. Yes, my star ratings are down. Pandemic plays a large role in it. My other facility was a five-star facility up until the pandemic started. I run good buildings.

**Mr. La Rue** Could you give us a flavor of the most recent surveys and what caused the star rating to be one star at Eleanor and two stars at the Renaissance?

**Applicant** Mostly staffing. Mostly staffing plays a very big role in it. My surveys are not terrible. They're pretty good. Staffing is an issue in Dutchess County. We are trying very hard. My buildings are currently pretty full. My staffing is okay. Better than most. We're trying very hard with the new regulations out there to meet them. I think that the way the buildings are being run right now shows at all.

**Mr. La Rue** My question is really historically. Are you saying that the last survey you were cited for not having sufficient staffing in the building to provide care?

**Applicant** We were cited for that. I said staffing is a struggle and that hurts with the PBJ and everything like that, that's why it hurts. My quality measures across the board, across the board from the day I walk into any building is about a three or four staff and quality measure. That's never dipped.

**Mr. La Rue** My question is about the health inspections. You're one star at Eleanor. You are three stars at Renaissance. What specifically happened in the survey that resulted in a one-star rating?

**Applicant** A clarification. In the January 2023 ratings that were just released by CMS two weeks ago, the Eleanor Health inspection went from a one star to a two star. It did not have an impact on the overall CMS star rating. The inspection went from one star to two star. I realize exactly what you're seeing is two points in time. The date that the individual took ownership and the latest available date prior to the issuance of the staff report. Prior, you know, understanding everything from COVID, but prior to COVID, both the Renaissance and Eleanor were three-, four- or five-star facilities for an extended period of time, months on end. For instance, in May of 2022, Renaissance was a four-star facility know. Eleanor was a five-star facility pre-COVID. It's all been impacted on the ability of staffing. I think that's indicative, unfortunately, of what's gone on throughout Dutchess County. It's been a very hard staffing area.

**Mr. La Rue** You're just not telling me what specifically drove the star rating to drop. Was there an IJ?

**Applicant** The staff that we had in the building and the turnover with the administrators, and it dropped. Every facility in the county is hovering around that level at the moment, but yet my occupancy is probably more than most.

**Mr. La Rue** I'm sure it's in the document here, but what's the rent payment that's going to be made to the realty company that's holding the home?

**Applicant** \$652,800.

**Mr. La Rue** Thank you.

**Mr. Robinson** Mr. La Rue, do you want to make any comments?

**Mr. Robinson** Thank you.

**Mr. Robinson** Any other questions from members of the committee or the rest of the council?

**Mr. Robinson** Thank you.

**Mr. Robinson** Is there anyone else from the public that wishes to speak on this application, either here or in Albany?

**Mr. Robinson** We'll let you step back from the table.

**Mr. Robinson** Thank you.

**Mr. Kraut** On this application?

**Mr. Robinson** Are you here to speak on this application?

**Mr. Robinson** Can you introduce yourself, please?

**Mr. Kraut** You don't have your microphone on.

**Heidi Siegfried** Heidi Siegfried, Health Policy Director at Center for Independence of the Disabled in New York. My question. I'm hearing this quite a bit on these different applications that the long-term care ombudsman has approved the proposal. I know the program that serves Dutchess County. I'm wondering if who is the long-term care program that approves the proposal? Is it the one in Albany? Is it the actual on the ground program that serves Dutchess County? Because I have mentioned as to this program that we hear this at these meetings. He doesn't know anything about it.

**Mr. Robinson** Thank you.

**Mr. Robinson** Can you answer that?

**Mr. Furnish** The long-term care is the state one at the State Office of Aging who is required by law now to submit.

**Heidi Siegfried** That would be Claudette?

**Mr. Robinson** Yes.

**Heidi Siegfried** Thank you.

**Mr. Robinson** I'm going to call the question now. This is for the committee members, please.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Ms. Monroe, are you in favor or opposed in Albany?

**Mr. Kraut** Do you guys hear us in Albany?

**Mr. Robinson** I couldn't tell your vote, Ann.

**Ms. Monroe** I voted yes.

**Mr. Robinson** Thank you.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** That motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Calling application 2 2 2 1 2 4 E, Woodcrest Rehabilitation and Residential Health Care Center in Queens County. This application calls for the transfer of 20% ownership interest from one withdrawing member to one new member. The department is recommending approval with a condition.

**Mr. Robinson** May I have a motion?

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** A second, Mr. Thomas.

**Mr. Furnish** Mark Furnish again from the Department. This is the Woodcrest project. It's a 200-bed proprietary residential health care facility located in Queens County. Elizabeth Goldbaum, one of the current operators, is gifting a 20% interest to her adult son, Sam Elliott Goldbaum. No project costs are associated with this application. No operating budget projections are included, as it is limited to a change in membership with no purchase price or change in services, location or business model. No negative character and confidence information has been received concerning the applicant. It does pass the 40% threshold test and the long-term care approved the project. Therefore, the department recommends approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions from the committee or members of the council.

**Mr. Robinson** Applicant, questions only.

**Mr. Robinson** Maybe the applicants in Albany?

**Mr. Robinson** Not sure.

**Mr. Robinson** Any comments from the applicant from Albany?

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** Thank you.

**Mr. Robinson** I think that's an aye from Ann.

**Mr. Robinson** Any abstentions?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** We now go to certificates.

**Mr. Robinson** A certificate of amendment of the certificate of incorporation. This is for Beth Israel Medical Center and changes its purpose. The department is recommending approval.

**Mr. Robinson** May I have a motion?

**Mr. Robinson** Thank you, Mr. Berliner.

**Mr. Robinson** Second, Dr. Kalkut.

**Mr. Robinson** Anybody from the department wishing to speak on this certificate?

**Mr. Kraut** The certificates amending for the Phillips School of Nursing to expand its training program to offer a Master of Science degree.

**Mr. Robinson** Anyone from the public wishing to speak on this application?

**Mr. Robinson** This is not on the Beth Israel application for later.

**Mr. Robinson** Thank you for checking.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Any abstentions?

**Mr. Robinson** That motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** A related certificate of incorporation for Cayuga Health System Inc. This is a name change. Department recommending approval.

**Mr. Robinson** Motion by Mr. Thomas.

**Mr. Robinson** Second by Dr. Berliner.

**Mr. Robinson** Any questions from the committee?

**Mr. Kraut** Addition of a corporate purpose. I have it on page 530.

**Mr. Kraut** It's to approve chemical dependence and substance abuse programs under the mental hygiene law and to approve Cayuga Health System Inc as the active parent of Cayuga Medical Center and Schuyler Hospitals, which we had approved previously in 2014.

**Mr. Robinson** This is just a name change to reflect those?

**Mr. Kraut** There's two memos here.

**Mr. Robinson** Anybody from the public wishing to speak on this certificate?

**Ms. Monroe** I have a question.

**Ms. Monroe** Mr. Chair, I have a question.

**Mr. Robinson** Thank you.

**Mr. Robinson** Please go ahead, Ms. Monroe.

**Ms. Monroe** Are they only coming in for a name change? They're also adding corporate purposes. I understood that was a chemical dependency program. I just want to make sure that they are sufficiently licensed under OMH and Oasis in order for us to approve them doing this. Am I misreading this application?

**Mr. Kraut** No, I think you're right. They already offer these programs. They're amending their bylaws to acknowledge the approvals they've received.

**Ms. Monroe** They have received those?

**Mr. Kraut** This is a bylaw change and it's their incorporation documents that were amending for them. They need to do it. They filed... There's about 200 pages of documentation, 150/180 pages of documentation that follows this.

**Ms. Monroe** Well, I don't want to read them all.

**Mr. Kraut** I do believe this follows the OMH approvals, but now the bylaws are being changed to reflect those approvals.

**Ms. Monroe** We are not looking at those OMH.

**Ms. Monroe** Thank you.

**Mr. Kraut** It's not an operating license. There's no operating license action as a consequence of this approval. I'm looking at their license right now and they are authorized to provide those services.

**Ms. Monroe** Ms. Monroe, are you satisfied with that response?

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** Thank you.

**Mr. Robinson** Any abstentions?

**Mr. Robinson** That motion carries.

**Mr. Robinson** That concludes the special meeting of the Establishment and Project Review Committee.

**Mr. Robinson** I turn it over to Mr. Kraut for the full council meeting.