

SURGICARE INC/DE  
Form PREM14A  
February 13, 2004

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SCHEDULE 14A INFORMATION

PROXY STATEMENT PURSUANT TO SECTION 14(A) OF THE SECURITIES EXCHANGE ACT OF 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only  
(as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to Section 240.14a-12

SURGICARE, INC.

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(Name of Registrant as Specified In Its Charter)

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(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

Common Stock, \$0.005 par value per share

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(2) Aggregate number of securities to which transaction applies:

61,169,520 shares of Common Stock (determined on a pre-reverse-split basis)

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

\$0.58 (based on the average of the high and low prices at which the common stock traded on February 9, 2004)

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(4) Proposed maximum aggregate value of transaction:

\$35,478,322

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(5) Total fee paid:

\$4,495.10

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- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

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(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

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, 2004

Dear SurgiCare Stockholders:

You are invited to attend the special meeting in lieu of an annual meeting of stockholders of SurgiCare to be held at the offices of SurgiCare, Inc. ( SurgiCare ) located at 12727 Kimberly Lane, Suite 200, Houston, Texas 77024 on May 4, 2004 at 5:30 p.m. local time.

The board of directors of SurgiCare has approved the acquisition by SurgiCare of Integrated Physician Solutions, Inc. ( IPS ), Dennis Cain Physician Solutions, Ltd. ( DCPS ), and Medical Billing Services, Inc. ( MBS ), and the agreements into which SurgiCare has entered to consummate the acquisitions. Assuming various conditions to the agreements are met, SurgiCare will acquire (a) IPS by merging a newly-formed SurgiCare subsidiary with and into IPS, with IPS as the surviving corporation in the merger, and (b) DCPS and MBS by merging a newly-formed SurgiCare subsidiary with and into MBS, with MBS as the surviving corporation in the merger, and then merging DCPS with and into MBS, with MBS as the surviving corporation in the merger ( DCPS/MBS ). In connection with the acquisitions, we will amend and restate our certificate of incorporation to effect a one-for-ten reverse stock split, redesignate our outstanding common stock as Class A Common Stock , establish two new classes of common stock entitled Class B Common Stock and Class C Common Stock and change our name to Orion HealthCorp, Inc.

Unless otherwise indicated, the share numbers in this letter and the proxy statement reflect the reverse stock split, as well as certain other assumptions described in the proxy statement. Following the acquisitions, IPS and DCPS/MBS will be wholly-owned subsidiaries of SurgiCare. In connection with the acquisition of IPS, we will issue an aggregate of 4,364,072 shares of Class A Common Stock (subject to adjustment as described in more detail in the proxy statement) to the stockholders of IPS and certain debtholders of IPS. We will issue an aggregate of 1,212,122 shares of Class C Common Stock (or 1,406,061 shares of Class C Common Stock, if the fair market value of SurgiCare common stock, based on the average of the high and low price per share over the five trading days immediately prior to the closing, is greater than or equal to \$0.70) to the equityholders of DCPS and MBS in connection with the acquisition of DCPS/MBS, subject to retroactive adjustment, and will reserve 75,758 shares of Class A Common Stock for issuance pursuant to that acquisition. The DCPS and MBS equityholders will also receive a cash payment and a promissory note from us at closing and may receive additional consideration, after the acquisition, including shares of Class A Common Stock, if certain conditions are met. The board has also approved an equity financing transaction, and the agreement SurgiCare entered into with Brantley Partners IV, L.P. ( Brantley IV ), pursuant to which SurgiCare will issue 9,084,395 shares of Class B Common Stock (subject to adjustment as described in more detail in the proxy statement) to Brantley IV to effect such equity financing.

Upon closing of the acquisitions and the equity financing and assuming the price of our common stock at the closing of the acquisitions and the equity financing will be \$0.531 per share, stockholders of IPS and certain debtholders of IPS will own approximately 20.8% of our capital stock on a fully-diluted basis, DCPS and MBS equity holders will own approximately 8.4% (which includes the maximum number of additional shares of Class A Common Stock issuable pursuant to the earn-out provisions of the DCPS/MBS merger agreement) of our capital stock on a fully-diluted basis and Brantley IV will own approximately 49.9% of our capital stock on a fully-diluted basis. These percentages will vary depending on the actual price of our common stock at the closing of the acquisitions and the equity financing. For purposes of calculating the percentages on a fully-diluted basis, we have assumed the cashless exercise of all options and warrants having an exercise price of less than \$0.55, the issuance of the maximum number of additional shares of Class A Common Stock to equityholders of DCPS/MBS pursuant to the earn-out

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provisions of the DCPS/MBS merger agreement and the exchange of all our Series AA preferred stock for common stock as described in the proxy statement.

Your board of directors is giving this proxy statement to you to solicit your proxy to vote on the following proposals:

1. Approval of our amended and restated certificate of incorporation. We propose to amend and restate our certificate of incorporation to (a) effect a reverse stock split of all of the outstanding shares of our common stock at a ratio of one-for-ten, (b) increase the number of authorized shares of common stock from 5 million shares to 90 million shares, after giving effect to the reverse stock split, and leave the number of authorized preferred shares at 20 million, (c) reclassify the common stock as Class A Common Stock, \$0.001 par value per share, (d) establish a new class of common stock entitled Class B Common Stock, \$0.001 par value per share, (e) establish a new class of common stock entitled Class C Common Stock, \$0.001 par value per share, and (f) change the name of the corporation to Orion HealthCorp, Inc.
  2. Approval of the issuance of shares of Class A Common Stock pursuant to, and in connection with, (a) an amended and restated merger agreement dated as of February 9, 2004, among SurgiCare, IPS Acquisition, Inc. (which is a new SurgiCare subsidiary created to implement the merger) and IPS, and (b) an amended and restated debt exchange agreement dated as of February 9, 2004, among SurgiCare, Brantley Venture Partners III, L.P. and Brantley Capital Corporation.
  3. Approval of the issuance of shares of Class C Common Stock and Class A Common Stock pursuant to, and in connection with, a merger agreement dated as of February 9, 2004, among SurgiCare, DCPS/MBS Acquisition, Inc. (which is a new SurgiCare subsidiary created to implement the merger), DCPS, MBS and the selling equityholders party thereto.
  4. Approval of the issuance of shares of Class B Common Stock to Brantley IV pursuant to an amended and restated stock subscription agreement dated as of February 9, 2004 between SurgiCare and Brantley IV.
  5. Approval of the issuance of up to ten million shares (prior to giving effect to the one-for-ten reverse stock split) of our common stock in exchange for our Series AA preferred stock.
  6. Election of the members of our board of directors and the election of the members of the board of directors of Orion HealthCorp, Inc. who will begin serving upon the consummation of the transactions described in the proxy statement.
  7. Approval of the Orion HealthCorp, Inc. 2004 Incentive Plan to replace our 2001 Stock Option Plan.
  8. Approval of the issuance of warrants to the current members of our board of directors.
  9. Approval of such other business as may lawfully come before the meeting.
- Our board of directors unanimously recommends that SurgiCare stockholders vote FOR each proposal.

Your vote is important, regardless of the number of shares you own. If you fail to vote or if you abstain, it will have the same effect as a vote against certain of the proposals. Please vote as soon as possible to make sure that your shares are represented at the special meeting. To vote your shares, please complete and return the enclosed proxy card in accordance with the procedures set forth in the section entitled The Special Meeting. You may also cast your vote in person at the special meeting.

Very truly yours,

SurgiCare, Inc.  
Keith G. LeBlanc  
*President and Chief Executive Officer*

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**SURGICARE, INC.**

**12727 Kimberly Lane, Suite 200  
Houston, Texas 77024  
(713) 973-6675**

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**NOTICE OF SPECIAL MEETING IN LIEU OF  
ANNUAL MEETING OF STOCKHOLDERS**

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**DATE: May 4, 2004** **PLACE: 12727 Kimberly Lane,  
Suite 200**  
**TIME: 5:30 p.m.** **Houston, Texas 77024**

**Matters to be Voted on:**

Stockholders who attend the meeting in person or by proxy will be asked to consider and approve the following items:

1. The adoption of an amended and restated certificate of incorporation to (a) effect a reverse stock split of all of the outstanding shares of our common stock, \$0.005 par value per share at a ratio of one-for-ten, (b) increase the number of authorized shares of common stock from 5 million shares to 90 million shares, after giving effect to the reverse stock split, and leave the number of shares of authorized preferred stock at 20 million shares, (c) reclassify SurgiCare common stock as Class A Common Stock, \$0.001 par value per share, (d) establish a new class of common stock entitled Class B Common Stock, \$0.001 par value per share, (e) establish a new class of common stock entitled Class C Common Stock, \$0.001 par value per share, and (f) change the name of SurgiCare, Inc. to Orion HealthCorp, Inc. ;
2. The issuance of shares of Class A Common Stock pursuant to (a) an amended and restated merger agreement dated as of February 9, 2004, among SurgiCare, IPS Acquisition, Inc., and Integrated Physician Solutions, Inc. ( IPS ), and (b) an amended and restated debt exchange agreement dated as of February 9, 2004, among SurgiCare, Inc., Brantley Venture Partners III, L.P. and Brantley Capital Corporation;
3. The issuance of shares of Class C Common Stock and Class A Common Stock pursuant to a merger agreement dated as of February 9, 2004, among SurgiCare, Inc., DCPS/MBS Acquisition, Inc., Dennis Cain Physician Solutions, Ltd. ( DCPS ), Medical Billing Services, Inc. ( MBS ) and the sellers party thereto (the DCPS/MBS Sellers );
4. The issuance of shares of Class B Common Stock to Brantley Partners IV, L.P. ( Brantley IV ) pursuant to an amended and restated subscription agreement dated as of February 9, 2004 between SurgiCare and Brantley IV;
5. The issuance of up to ten million shares (prior to giving effect to the one-for-ten reverse stock split) of our common stock in exchange for our Series AA preferred stock;
6. The election of the members of our board of directors and the election of the members of the board of directors of Orion HealthCorp, Inc. who will begin serving upon the consummation of the transactions described herein;
7. The Orion HealthCorp, Inc. 2004 Incentive Plan (the 2004 Incentive Plan );
8. The issuance of warrants to the current members of our board of directors; and
9. Such other business as may properly come before the meeting and any adjournment thereof.

**Who May Attend and Vote at the Meeting:**

Holders of record of our common stock and Series AA preferred stock at the close of business on March 15, 2004, and valid proxy holders may attend and vote at the meeting and any adjournments or postponements of the meeting. If your shares are registered in the name of a brokerage firm or trustee and you plan to attend the meeting, please obtain from the firm or trustee a letter or other evidence of your beneficial ownership of those shares to facilitate your admittance to the meeting.

Your vote is very important, regardless of the number of shares you own. Please vote as soon as possible to make sure that your shares are represented at the meeting. To vote your shares, you must complete and return the enclosed proxy card. If you are a holder of record, you may also cast your vote in person at the special meeting. If your shares are held in an account at a brokerage firm or bank, you must instruct them on how to vote your shares. If you do not vote or do not instruct your broker or bank how to vote, it will have the same effect as voting AGAINST the proposal described above regarding the adoption of an amended and restated certificate of incorporation.

**Approval Required to Consummate the Transactions:**

The IPS merger agreement, the debt exchange agreement, the DCPS/MBS merger agreement and the stock subscription agreement described above require that we receive stockholder approval of items one through seven above in order to consummate any of the transactions governed by such documents.

**We sent this meeting notice and proxy statement to stockholders on or about \_\_\_\_\_, 2004.**

**By Order of the Board of Directors**

KEITH G. LEBLANC  
*President and Chief Executive Officer*

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**TABLE OF CONTENTS**

Summary Term Sheet	1
Statement Regarding Forward-Looking Information	10
The Special Meeting	11
The Transactions	14
The IPS Merger	19
The DCPS/MBS Merger	30
The Equity Financing	43
Unaudited Pro Forma Condensed Combined Financial Statements	46
Information about SurgiCare	54
Information about IPS	68
Information about DCPS AND MBS	83
Proposal One Amended and Restated Certificate of Incorporation	95
Proposal Two Issuance of Shares of Class A Common Stock in Connection with the IPS Merger	103
Proposal Three Issuance of Shares of Class C Common Stock and Class A Common Stock in Connection with the DCPS/MBS Merger	104
Proposal Four Issuance of Shares of Class B Common Stock in Connection with the Equity Financing	105
Proposal Five Issuance of Our Common Stock in Exchange for Series AA Preferred Stock	107
Proposal Six Election of Directors	108
Proposal Seven Approval of New Incentive Plan	118
Proposal Eight Approval of Warrant Issuances to the Directors	124
Proposal Nine Other Matters	125
Independent Public Accountants	126
Stockholder Proposals	127
Index to Financial Statements	128
Annex A: Amended and Restated IPS Merger Agreement	
Annex B: DCPS/MBS Merger Agreement	
Annex C: SurgiCare 10-KSB for the Fiscal Year Ended December 31, 2002 and 10-QSB for the Quarterly Period Ended September 30, 2003	
Annex D: Opinion of SurgiCare's Financial Advisor	
Annex E: Form of Employment Agreement	
Annex F: Amended and Restated Debt Exchange Agreement	
Annex G: Registration Rights Agreement	
Annex H: Amended and Restated Stock Subscription Agreement	
Annex I: Financial Statements of IPS	
Annex J: Financial Statements of DCPS	
Annex K: Financial Statements of MBS	
Annex L: Amended and Restated Certificate of Incorporation	
Annex M: Charter of Audit Committee	
Annex N: Bylaws of Orion HealthCorp, Inc.	
Annex O: 2004 Incentive Plan	



**SUMMARY TERM SHEET**

**FOR IPS MERGER,  
DCPS/MBS MERGER  
AND  
EQUITY FINANCING**

*This brief summary does not contain all of the information that is important to you. To fully understand the acquisitions you should carefully read this entire document and the other documents to which this summary refers. In this proxy statement, references to SurgiCare, we, our, us and our company refer to SurgiCare, Inc. and all its subsidiaries. We refer to Integrated Physician Solutions, Inc. as IPS, to Dennis Cain Physician Solutions, Ltd. as DCPS, to Medical Billing Services, Inc., as MBS and to our new DCPS and MBS subsidiary as DCPS/MBS. In addition, we refer to the merger agreement between IPS and SurgiCare, as amended to date, as the IPS Merger Agreement and the related merger as the IPS Merger, and we refer to the merger agreement between DCPS, MBS and SurgiCare as the DCPS/MBS Merger Agreement and the related acquisitions as the DCPS/MBS Merger. We refer to the IPS Merger and the DCPS/MBS Merger collectively as the Acquisitions or the Mergers. We refer to IPS Merger Agreement, the DCPS/MBS Merger Agreement, the Stock Subscription Agreement (defined below) and the Debt Exchange Agreement (defined below) collectively as the Transaction Documents, and the transactions contemplated thereby as the Transactions.*

*Unless otherwise indicated, all share amounts give effect to the reverse stock split described in this proxy statement (the Reverse Stock Split). Unless otherwise indicated, all share amounts and percentages are based on the assumptions described in the section Assumptions and are therefore subject to change if such assumptions are not accurate at the time of the closing of the Acquisitions.*

**Overview**

On November 18, 2003, we entered into an agreement and plan of merger, which we amended and restated on February 9, 2004, relating to the merger of our wholly-owned subsidiary, IPS Acquisition, Inc., with and into IPS, with IPS as the surviving corporation, and a debt exchange agreement, which we also amended and restated on February 9, 2004, with Brantley Venture Partners III, L.P. and Brantley Capital Corporation, each of which is a debtholder of IPS and an affiliate of Brantley IV (as amended to date, the Debt Exchange Agreement). See The Transactions beginning on page 14 and The Transactions The IPS Merger beginning on page 19.

On February 9, 2004, we entered into an agreement and plan of merger relating to the merger of our wholly-owned subsidiary, DCPS/MBS Acquisition, Inc., with and into MBS, with MBS as the surviving corporation and the subsequent merger of DCPS with and into MBS, with MBS as the surviving corporation. See The Transactions beginning on page 14 and The Transactions The DCPS/MBS Merger beginning on page 30.

On November 18, 2003, we entered into a stock subscription agreement with Brantley IV, which we amended and restated on February 9, 2004 (as amended to date, the Stock Subscription Agreement), pursuant to which Brantley IV will purchase shares of Class B Common Stock by surrendering for cancellation promissory notes issued by SurgiCare and IPS to a wholly-owned subsidiary of Brantley IV (the Bridge Notes) and contributing cash in an amount equal to \$6 million minus (a) the amount by which the aggregate principal amount of the Bridge Notes issued by SurgiCare (the SurgiCare Bridge Notes) surrendered for cancellation exceeds \$490,000, (b) the amount by which the aggregate principal amount of the Bridge Notes issued by IPS (the IPS Bridge Notes) surrendered for cancellation exceeds \$790,000, and (c) the accrued but unpaid interest on such excesses. As of January 31, 2004, the aggregate principal amount of the outstanding Bridge Notes was \$2.055 million, and the aggregate amount of these excesses and accrued interest was \$778,950. See The Transactions beginning on page 14 and The Transactions The Equity Financing beginning on page 43.

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We are seeking your approval of our amended and restated certificate of incorporation. We are proposing to amend and restate our certificate of incorporation to:

effect a one-for-ten reverse stock split of all of the outstanding shares of our common stock;

increase the number of authorized shares of common stock from 5 million shares to 90 million shares, after giving effect to the Reverse Stock Split, and leave the number of authorized shares of preferred stock at 20 million shares;

reclassify SurgiCare common stock as Class A Common Stock, \$0.001 par value;

establish two new classes of common stock entitled Class B Common Stock and Class C Common Stock ; and

change the name of the corporation to Orion HealthCorp, Inc.

We cannot complete the Transactions unless the amended and restated certificate of incorporation is approved at the special meeting. Please see the section entitled Proposal One Amended and Restated Certificate of Incorporation beginning on page 96.

We are seeking your approval to authorize the issuance of shares of our Class A Common Stock in connection with the IPS Merger and the Debt Exchange Agreement, in compliance with American Stock Exchange rules. We cannot complete the Transactions unless this issuance of our Class A Common Stock is approved at the special meeting. Please see the section entitled Proposal Two Issuance of Shares of Class A Common Stock in connection with the IPS Merger beginning on page 104.

We are seeking your approval to authorize the issuance of shares of our Class C Common Stock and Class A Common Stock in connection with the DCPS/MBS Merger, in compliance with American Stock Exchange rules. We cannot complete the Transactions unless this issuance of our Class C Common Stock and Class A Common Stock is approved at the special meeting. Please see the section entitled Proposal Three Issuance of Shares of Class C Common Stock in connection with the MBS/DCPS Merger beginning on page 105.

We are seeking your approval to authorize the issuance of shares of our Class B Common Stock pursuant to the Stock Subscription Agreement (the Equity Financing ), in compliance with American Stock Exchange rules. We cannot complete the Transactions unless the issuance of our Class B Common Stock is approved at the special meeting. Please see the section entitled Proposal Four Issuance of Shares of Class B Common Stock in Connection with the Equity Financing beginning on page 106.

We are seeking your approval to authorize the issuance of up to ten million shares (prior to giving effect to the Reverse Stock Split) of our common stock in exchange for our Series AA preferred stock, in compliance with American Stock Exchange rules. Please see the section entitled Proposal Five Issuance of Shares of Class A Common Stock in Exchange for Series AA Preferred Stock beginning on page 108.

We are seeking your approval for the reelection of our current directors (who will serve until the closing of the Transactions) and for election of the seven new nominees for directors to serve on the board of Orion HealthCorp, Inc. ( Orion ) beginning upon the consummation of the Transactions. The Transaction Documents require that the nominees for the board of directors of Orion be elected by our stockholders. However, such requirement may be waived upon receipt of the necessary consents under the Transaction Documents. Please see the section entitled Proposal Six Election of Directors beginning on page 109.

We are seeking your approval for our 2004 Incentive Plan. The Transaction Documents and the American Stock Exchange rules require that the 2004 Incentive Plan be approved by our stockholders. However, such requirement may be waived upon receipt of the necessary consents

under the Transaction Documents. Please see the section entitled "Proposal Seven - Approval of New Incentive Plan" beginning on page 119.

We are seeking your approval to authorize the issuance of warrants to the current members of our board of directors, in compliance with the American Stock Exchange rules. Please see the section entitled "Proposal Eight - Approval of Warrant Issuances to the Directors" beginning on page 125.

#### **Assumptions**

Certain share numbers, dollar amounts, and percentages as they appear in this proxy statement are calculated based on formulas which include variable factors that will not be ascertained until immediately prior to the closing of the Transactions, such as the stock price for the SurgiCare common stock. Therefore, in order to arrive at the values to include in this proxy statement, we had to make assumptions regarding such information. We have assumed:

That the stock price for our common stock immediately prior to the closing of the Transactions (whether determined as of a specific date or calculated based on average prices over a specified period of days) is \$0.531 per share, which was the average of the daily average of the high and low trading prices of our common stock on the American Stock Exchange for the five trading days ending on January 30, 2004. Changes in the stock price of our common stock affect, among other things, the number of shares to be issued to Brantley IV, to equityholders of IPS and MBS and to debtholders of IPS.

That all outstanding shares of our Series AA preferred stock will be exchanged for an aggregate of ten million shares (prior to giving effect to the Reverse Stock Split) of our common stock.

That the number of shares of SurgiCare stock outstanding on a fully-diluted basis, assuming exchange of our Series AA preferred stock for shares of our common stock and exercise of in-the-money options and warrants based on the closing price set forth above, immediately prior to the closings of the Transactions is 43,640,717 (prior to giving effect to the Reverse Stock Split), which is the number of shares of SurgiCare stock outstanding on a fully-diluted basis assuming exchange of our Series AA preferred stock for ten million shares of our common stock (prior to giving effect to the Reverse Stock Split) and cashless exercise of in-the-money options and warrants as of January 31, 2004, based on a price of \$0.55 per share. Changes in the outstanding number of shares of our common stock affect, among other things, the number of shares to be issued to Brantley IV, to equityholders of IPS and to debtholders of IPS.

That the number of outstanding shares of Class A Common Stock on a fully-diluted basis immediately following the consummation of the Transactions, assuming conversion of Class B and Class C Common Stock at the initial conversion rates, exercise of in-the-money options and warrants as described above, the issuance of the maximum number of additional shares of Class A Common Stock to equityholders of DCPS/MBS pursuant to the earn-out provisions of the DCPS/MBS Merger Agreement and the other assumptions in this proxy statement, is 20,936,418 (the Fully-Diluted Orion Shares). Changes in the number of shares of our common stock outstanding following the Transactions affect the percentage ownership of the stockholders.

That there will be no dissenting IPS stockholders.

That there will be no dissenting DCPS or MBS equityholders.

#### **The Companies (See Pages 54, 68 and 83)**

*SurgiCare, Inc.* SurgiCare is a Delaware corporation. We develop, acquire and operate freestanding ambulatory surgery centers. These freestanding ambulatory surgery centers are licensed outpatient surgery centers that are equipped and staffed for a variety of surgical procedures. These freestanding ambulatory surgery centers provide a cost-effective alternative to the delivery of healthcare services at traditional inpatient hospitals. We, through our wholly-owned subsidiaries,

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own, or have investments in, four ambulatory surgery centers located in Texas and Ohio. Our principal executive offices are located at 12727 Kimberly Lane, Suite 200, Houston, Texas 77024 and our telephone number is (713) 973-6675.

*Integrated Physician Solutions, Inc.* IPS is a Delaware corporation. IPS is a Roswell, Georgia-based holding company whose business units include Pediatric Physician Alliance ( PPA ) and IntegriMED. PPA is a provider of business management services dedicated to the practice of pediatrics. PPA s services are designed to help medical practices lower costs and improve financial performance. Currently, PPA manages 13 practice sites, representing eight medical groups in California, Illinois, Ohio, Texas and New Jersey. IntegriMED provides software and technology solutions for physicians through an Application Service Provider ( ASP ) model. Its primary offering is a suite of integrated business and clinical software applications that provides practice management, billing, scheduling and electronic medical records. IPS s principal executive offices are located at 1805 Old Alabama Road, Suite 350, Roswell, Georgia 30076 and its telephone number is (678) 832-1800.

*Dennis Cain Physician Solutions, Ltd.* DCPS is a Texas limited partnership. DCPS, based in Houston, Texas, provides physician management services, including collections and consulting services, to hospital-based physicians and clinics. DCPS s principal offices are located at 714 FM 1960 West, Suite 206, Houston, Texas 77090 and its telephone number is (281) 880-6994.

*Medical Billing Services, Inc.* MBS is a Texas corporation. MBS, based in Houston, Texas, provides practice management, billing and collection, managed care consulting and coding/reimbursement services to hospital-based physicians and clinics. MBS s principal offices are located at 10700 Richmond Avenue, Suite 320, Houston, Texas 77042 and its telephone number is (713) 432-1100.

### **Reasons for the Transactions (See Page 14)**

The Transactions serve SurgiCare s strategic goals of enhancing its practice management capabilities for physicians and combining businesses that are complementary to its existing operations. We believe that if we do not complete the Equity Financing and the other Transactions, we will not be able to obtain the capital needed to fund our business plan and operations from other sources. The Equity Financing will allow us to address our liquidity issues, support our working capital requirements, strengthen our balance sheet and support our strategic goals and our business plan for Orion. The pro forma revenues for the combined entities, which will become Orion HealthCorp, Inc., for the year ended December 31, 2002 and nine months ended September 30, 2003, are in excess of \$42.4 million and \$31.8 million, respectively. See Unaudited Pro Forma Condensed Combined Financial Statements. The resulting, significantly larger company will be better equipped to achieve additional growth in its core businesses and to expand into new areas of outpatient healthcare delivery, including through future acquisitions. Orion s strategy will be to develop a comprehensive, multi-dimensional, alternative site healthcare delivery system. This integrated healthcare services delivery model will focus on serving the needs of the healthcare providers who utilize our services and their clients and on better enabling them to meet the demands of the outpatient marketplace. Orion will also continue to supply IPS s, DCPS s and MBS s physician and practice management services and tools to their existing users and will seek to expand its client base for these services.

### **Interests of Directors and Executive Officers in the Transactions (See Page 16)**

Some of SurgiCare s executive officers, directors, and proposed directors and executive officers of Orion or its subsidiaries have interests in the Transactions that are different from, or are in addition to, your interests. Certain officers of SurgiCare, IPS, DCPS and MBS will enter into employment contracts with Orion and so may have a special interest in completing the Transactions. The current members of our board of directors will receive warrants upon the effectiveness of the Transactions. Finally, two of the nominees to become directors after the Transactions are affiliated with Brantley Partners and its affiliates.

Certain Brantley Partners affiliates have outstanding loans to SurgiCare and IPS and will receive shares of Class A Common Stock pursuant to the Debt Exchange Agreement or Class B Common Stock pursuant to the Stock Subscription Agreement.

**The Special Meeting (See Page 11)**

Our stockholders' meeting will be held at the offices of SurgiCare at 12727 Kimberly Lane, Suite 200, Houston, Texas 77024 on May 4, 2004, starting at 5:30 p.m., local time.

Holders of shares of our common stock and Series AA preferred stock as of \_\_\_\_\_, 2004 are entitled to notice of, and to vote at, the special meeting.

The vote necessary to approve each proposal is described in the section entitled "The Special Meeting - What Vote is Required for Each Proposal."

**The IPS Merger (See Page 19)**

**Summary**

We will acquire IPS by merging a newly-formed, wholly-owned subsidiary organized by us with and into IPS, with IPS as the surviving corporation. As a consequence of the merger, IPS will become a wholly-owned subsidiary of SurgiCare. However, IPS will be treated as the acquiring party for accounting purposes because we will account for the IPS Merger under the purchase method of accounting for business combinations.

In connection with the IPS Merger, and based on the assumptions used in this proxy statement, IPS equityholders and certain IPS debtholders that are affiliates of Brantley IV will receive an aggregate of approximately 4,364,072 shares of Class A Common Stock (representing approximately 20.8% of the Fully-Diluted Orion Shares).

We will not issue fractional shares of our common stock. Instead, each holder of shares of IPS common stock and/or preferred stock who otherwise would be entitled to a fraction of a share will be entitled to receive a cash payment in lieu of such fractional share.

We have attached the IPS Merger Agreement as Annex A to this document. We urge you to read the IPS Merger Agreement in its entirety. It is the legal document that governs the IPS Merger.

**Regulatory Approvals**

We are not aware of any governmental approvals or actions that are required to complete the IPS Merger, apart from standard regulatory notifications and approvals in connection with the transfer of health care businesses. We plan to provide appropriate regulatory notification, seek any required governmental approval, and take any other necessary action to consummate the IPS Merger.

SurgiCare will file two additional listing applications with the American Stock Exchange. One additional listing application will cover the Reverse Stock Split and reclassification of SurgiCare's common stock as Class A Common Stock. The second additional listing application will cover the shares of Class A Common Stock issuable in connection with the IPS Merger and the other transactions described in this proxy statement. The Transaction Documents require that the shares of Class A Common Stock issuable thereunder be authorized for listing on the American Stock Exchange, subject to official notice of issuance, as a condition to closing.

**Tax Consequences**

SurgiCare stockholders generally will not recognize taxable gain or loss as a result of the IPS Merger. See "The Transactions - The IPS Merger - Certain Material U.S. Federal Income Tax Consequences of the IPS Merger" below for a more detailed discussion of the tax considerations that may be relevant.

***Accounting Treatment***

The IPS Merger will be treated as a reverse acquisition for accounting purposes, with IPS treated as the acquiring party for accounting purposes. The purchase price, comprised of the fair value of the shares issued to current stockholders of SurgiCare, plus applicable transaction costs, will be allocated to the fair value of SurgiCare's tangible and intangible assets and liabilities, with any excess being considered goodwill. See *The Transactions - The IPS Merger - Accounting Treatment of the IPS Merger* below for additional information regarding the accounting treatment.

***Overview of the IPS Merger Agreement (See Page 21)***

*Conditions to the Completion of the IPS Merger.* IPS's and our company's obligations to complete the IPS Merger are subject to the satisfaction or waiver of certain conditions specified in the IPS Merger Agreement, including the approval by our stockholders of the issuance of our Class A Common Stock in connection with the IPS Merger (Proposal Two) and certain of the other proposals contained in this proxy statement (Proposal One and Proposal Three through Proposal Seven).

*Termination of the IPS Merger Agreement.* The IPS Merger Agreement may be terminated in a number of circumstances, including the following:

by mutual consent of each of SurgiCare and IPS;

by either party, if the IPS Merger is not completed by May 14, 2004;

by either party, if the required stockholder approvals are not obtained; or

by either party, if any governmental authority issues a final and non-appealable order prohibiting the consummation of the IPS Merger (but the merger agreement cannot be terminated for this reason by a party whose failure to fulfill its obligations under the merger agreement resulted in such order).

*Termination Fees.* The IPS Merger Agreement provides that in certain circumstances, the party responsible for triggering the underlying cause for the termination of the IPS Merger Agreement will reimburse the other party for all of its reasonable out-of-pocket expenses. Pursuant to the Stock Subscription Agreement, upon termination of the IPS Merger Agreement in specified circumstances, SurgiCare is required by the Stock Subscription Agreement to reimburse Brantley IV for its reasonable out-of-pocket expenses. In certain of these circumstances, SurgiCare is also required to pay Brantley IV a non-refundable fee of \$3 million.

*No Solicitation Provisions.* The IPS Merger Agreement contains detailed provisions prohibiting the parties from seeking an alternative transaction. These no solicitation provisions prohibit each of SurgiCare and IPS as well as their officers, directors, subsidiaries and agents, from taking any action to solicit an acquisition proposal. The IPS Merger Agreement does not, however, prohibit SurgiCare or IPS or their respective boards of directors from considering, and potentially recommending, an unsolicited bona fide written acquisition proposal from a third party that the board of directors concludes in good faith constitutes a superior proposal.

*Completion and Effectiveness of the IPS Merger.* We will complete the IPS Merger when all of the conditions to completion of the IPS Merger are satisfied or waived in accordance with the IPS Merger Agreement. The IPS Merger will become effective when we file a certificate of merger with the Delaware Secretary of State. We expect to complete the IPS Merger promptly after the meeting of our stockholders.

**The DCPS/MBS Merger (See Page 30)**

***Summary***

We will acquire MBS by merging a newly-formed, wholly-owned subsidiary organized by us with and into MBS, with MBS as the surviving corporation. As a consequence of the merger, MBS will become a wholly-owned subsidiary of SurgiCare. Immediately following the MBS merger, DCPS will merge with and into MBS, with MBS as the surviving corporation.

Equityholders of DCPS and MBS will receive an aggregate of \$3.5 million in cash, promissory notes of SurgiCare in an aggregate principal amount of \$500,000 and 1,212,122 shares of Class C Common Stock (or an aggregate of \$2.9 million in cash, promissory notes of SurgiCare in an aggregate principal amount of \$500,000 and 1,406,061 shares of Class C Common Stock if the fair market value of SurgiCare common stock, based on the average of the high and low price per share over the five trading days immediately prior to the closing, is greater than or equal to \$0.70). The purchase price is subject to retroactive increase (including issuance of up to 465,000 shares of Class A Common Stock) or decrease based on the financial results of the newly-formed company in the two years following the DCPS/MBS merger. Based on the assumptions in this proxy statement, including the fair market value of our common stock being less than \$0.70, and assuming the maximum retroactive increase in purchase price, the DCPS/MBS equityholders will own approximately 8.4% of the Fully-Diluted Orion Shares. In addition, 75,758 shares of our Class A Common Stock will be reserved for issuance at the direction of the DCPS/MBS Sellers and the MBS and DCPS equityholders may receive other payments as described in The Transactions The DCPS/MBS Merger The DCPS/MBS Merger Agreement Additional Issuances, Advances and Payments.

We have attached the DCPS/MBS Merger Agreement as Annex B to this document. We urge you to read the DCPS/MBS Merger Agreement in its entirety. It is the legal document that governs the DCPS/MBS Merger.

***Regulatory Approvals***

We are not aware of any governmental approvals or actions that are required to complete the DCPS/MBS Merger, apart from standard regulatory notifications and approvals in connection with the transfer of health care businesses. We plan to provide appropriate regulatory notification, seek any required governmental approval, and take any other necessary action.

SurgiCare will file two additional listing applications with the American Stock Exchange. One additional listing application will cover the Reverse Stock Split and reclassification of SurgiCare's common stock as Class A Common Stock. The second additional listing application will cover the shares of Class A Common Stock issuable upon conversion of the Class C Common Stock or otherwise pursuant to the DCPS/MBS Merger Agreement and the other transactions described in this proxy statement. The Transaction Documents require that the shares of Class A Common Stock issuable thereunder be authorized for listing on the American Stock Exchange, subject to official notice of issuance, as a condition to closing.

***Tax Consequences***

SurgiCare stockholders generally will not recognize taxable gain or loss as a result of the DCPS/MBS Merger. See The Transactions The DCPS/MBS Merger Certain Material U.S. Federal Income Tax Consequences of the DCPS/MBS Merger below for a more detailed discussion of the tax considerations that may be relevant.

***Accounting Treatment***

SurgiCare intends to account for the DCPS/MBS Merger as a purchase transaction for financial reporting and accounting purposes in accordance with Statement of Financial Accounting Standards

No. 141. The purchase price, which is equal to the total consideration of cash, notes and new SurgiCare Class C Common Stock, will be allocated based on the fair values of the DCPS/MBS assets acquired and liabilities assumed. The amount of the purchase price in excess of the fair value of the net tangible assets of DCPS/MBS acquired will be recorded as goodwill and other tangible assets. See *The Transactions* *The DCPS/MBS Merger* *Accounting Treatment of the DCPS/MBS Merger* below for additional information regarding the accounting treatment.

***Overview of the DCPS/MBS Merger Agreement (See Page 32)***

*Conditions to the Completion of the DCPS/MBS Merger.* DCPS's, MBS's and our company's obligation to complete the DCPS/MBS Merger is subject to the satisfaction or waiver of certain conditions specified in the DCPS/MBS Merger Agreement, including the approval by our stockholders of the issuance of our Class C Common Stock in connection with the DCPS/MBS Merger (Proposal Three) and certain of the other proposals contained in this proxy statement (Proposal One, Proposal Two and Proposal Four through Proposal Seven).

*Termination of the DCPS/MBS Merger Agreement.* The DCPS/MBS Merger Agreement may be terminated in a number of circumstances, including the following:

by consent of each of SurgiCare, DCPS and MBS;

by either SurgiCare or DCPS and MBS, if the DCPS/MBS Merger is not completed by May 14, 2004;

by either SurgiCare or DCPS and MBS, if the required SurgiCare stockholder approvals are not obtained; or

by either SurgiCare or DCPS and MBS, if any governmental authority issues a final and non-appealable order prohibiting the consummation of the DCPS/MBS Merger (but the merger agreement cannot be terminated for this reason by a party whose failure to fulfill its obligations under merger agreement resulted in such order).

*Termination Fees.* In the event that the DCPS/MBS Merger Agreement is terminated under certain specified circumstances, SurgiCare will reimburse DCPS and MBS for all reasonable out-of-pocket expenses incurred by or on behalf of DCPS or MBS.

*Completion and Effectiveness of the DCPS/MBS Merger.* We will complete the DCPS/MBS Merger when all of the conditions to completion of the DCPS/MBS Merger are satisfied or waived in accordance with the DCPS/MBS Merger Agreement. The DCPS/MBS Merger will become effective upon the filing of certificates of merger with the Texas Secretary of State or such later time as may be specified in the certificates of merger. We expect to complete the DCPS/MBS Merger promptly after the meeting of our stockholders.

**The Equity Financing (See Page 43)**

***Summary***

Pursuant to the Stock Subscription Agreement, Brantley IV will purchase shares of Class B Common Stock by surrendering the Bridge Notes for cancellation and contributing cash in an amount equal to \$6 million minus (a) the amount by which the aggregate principal amount of the SurgiCare Bridge Notes surrendered for cancellation exceeds \$490,000, (b) the amount by which the aggregate principal amount of the IPS Bridge Notes surrendered for cancellation exceeds \$790,000, and (c) the accrued but unpaid interest on such excesses. As of January 31, 2004, the aggregate principal amount of the outstanding SurgiCare Bridge Notes is \$665,000 and the aggregate principal amount of the IPS Bridge Notes is \$1.39 million, which results in an aggregate excess principal amount of \$775,000. The accrued interest on this excess was \$3,950 as of January 31, 2004.



In exchange for Brantley IV's contribution, and based on the assumptions used in this proxy statement, Brantley IV will receive approximately 9,084,395 shares of Class B Common Stock, which will initially represent, on an as-converted basis, approximately 49.9% of the Fully-Diluted Orion Shares. Assuming everything else remains the same, the percentage interest of Brantley IV upon conversion will continually increase, since the conversion factor for the Class B Common Stock is designed to yield additional shares of Class A Common Stock, or portions thereof, necessary to approximate the unpaid portion of the return of the original purchase price for the Class B Common Stock, plus an amount equal to nine percent (9%) per annum on the amount of the original purchase price, without compounding, from the date the Class B Common Stock was first issued to the date of conversion.

***Overview of Equity Financing Documents***

The Stock Subscription Agreement contains customary closing conditions, along with additional conditions, including the requirement that SurgiCare complete additional financing and that the closing conditions to the IPS Merger Agreement and the DCPS/MBS Merger Agreement be satisfied, as well as representations, warranties and covenants. It also imposes certain indemnification obligations on the parties and provides for payment by SurgiCare of a non-refundable fee of \$3 million and reasonable out-of-pocket expenses to Brantley IV if the IPS Merger Agreement is terminated under certain specified circumstances.

Brantley IV and Orion will also enter into a registration rights agreement pursuant to which Brantley IV may cause Orion to register the shares of Class A Common Stock issuable upon conversion of Brantley IV's shares of Class B Common Stock. The IPS stockholders and debtholders and the DCPS and MBS equityholders will be third-party beneficiaries to this agreement. Until the first anniversary of the date of the registration rights agreement, such third-party beneficiaries are permitted to cause Orion to add the shares of Class A Common Stock they hold, including the shares of Class A Common Stock issuable upon conversion of the shares of Class C Common Stock they hold, to a registration statement on which Brantley IV's shares are being registered.

***Regulatory Approvals***

We are not aware of any governmental approvals or actions that are required to complete the Equity Financing, apart from standard regulatory notifications and approvals in connection with the transfer of health care businesses. We plan to provide appropriate regulatory notification, seek any required governmental approval, and take any other necessary action.

SurgiCare will file two additional listing applications with the American Stock Exchange. One additional listing application will cover the Reverse Stock Split and reclassification of SurgiCare's common stock as Class A Common Stock. The second additional listing application will cover the shares of Class A Common Stock issuable upon conversion of the Class B Common Stock issued in the Equity Financing and the Class A Common Stock issuable pursuant to the other transactions described in this proxy statement. The Transaction Documents require that the shares of Class A Common Stock issuable thereunder be authorized for listing on the American Stock Exchange, subject to official notice of issuance, as a condition to closing.

***Tax Consequences***

SurgiCare stockholders generally will not recognize taxable gain or loss as a result of the equity financing transaction with Brantley IV. See *The Transactions* *The Equity Financing* *Certain Material U.S. Federal Income Tax Consequences of the Equity Financing* below for a more detailed discussion of the tax considerations that may be relevant.

**STATEMENT REGARDING FORWARD-LOOKING INFORMATION**

The information in this proxy statement contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Statements that are not historical in nature, including statements about beliefs and expectations, are forward-looking statements. Forward-looking statements include statements preceded by, followed by or that include the words may, will, should, estimates, predicts, potential, continue, strategy, believes, anticipates, intends and similar expressions. The forward-looking statements in this proxy statement regarding us, IPS, DCPS, MBS, and the combined company following the merger of our wholly-owned subsidiaries with and into MBS (which will then merge with DCPS) and IPS, relate to, among other things:

financial condition;

revenues and results of operations;

business and financing plans, including plans for growth and future acquisitions;

description of businesses;

business strategy, operating efficiencies or synergies, competitive positions, growth opportunities for existing services;

plans, objectives and composition of management;

the market for our securities and effectiveness of the Reverse Stock Split;

our listing application with the American Stock Exchange and listing status;

potential and existing customers;

government licensing, insurance laws, reimbursement regulations and restrictions on physician ownership of healthcare facilities; and

the economic environment in the markets in which we, IPS, DCPS and MBS operate.

You should not place undue reliance on these forward-looking statements, which speak only as of the date of this proxy statement. These statements are based upon current expectations. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of future events, new information or otherwise. All forward-looking statements are subject to risks and uncertainties that could cause actual events to differ materially from those projected. Important factors that might cause or contribute to such a discrepancy include, but are not limited to:

the extent of our ability to integrate the operations of IPS, DCPS and MBS with ours;

the effects of competition in the markets in which we, IPS, DCPS and MBS operate;

the impact of technological change on our business and that of IPS, DCPS and MBS;

the effect of any unknown liabilities of SurgiCare, IPS, MBS, and DCPS that materialize after the transactions;

the impact of the change in our management following the closing of the transactions;

the effect of the transactions on our American Stock Exchange listing status;

the impact of control by Brantley;

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the effect of the Reverse Stock Split on the price of our securities;

future regulatory changes; and

other risks referenced from time to time in our filings with the Securities and Exchange Commission (the SEC ), including our annual report on Form 10-KSB for our fiscal year ended December 31, 2002 and our report on Form 10-QSB for the quarterly period ended September 30, 2003, which are attached as Annex C to this proxy statement.

## THE SPECIAL MEETING

### What is the Purpose of the Meeting?

The SurgiCare stockholders meeting is being held so that our stockholders may consider and vote upon the following proposals:

*Proposal 1.* To approve our amended and restated certificate of incorporation. We are proposing to amend and restate our certificate of incorporation to (a) effect a reverse stock split of all of the outstanding shares of our common stock at a ratio of one-for-ten, (b) increase the number of authorized shares of common stock from 5 million shares to 90 million shares, after giving effect to the Reverse Stock Split, and leave the number of authorized shares of preferred stock at 20 million shares, (c) reclassify our common stock as Class A Common Stock, \$0.001 par value per share, (d) establish a new class of common stock entitled Class B Common Stock, \$0.001 par value per share, (e) establish a new class of common stock entitled Class C Common Stock, \$0.001 par value per share, and (f) change the name of the corporation to Orion HealthCorp, Inc.

*Proposal 2.* To approve the issuance of shares of Class A Common Stock pursuant to the IPS Merger Agreement and the Debt Exchange Agreement.

*Proposal 3.* To approve the issuance of shares of Class C Common Stock and Class A Common Stock pursuant to the DCPS/MBS Merger Agreement.

*Proposal 4.* To approve the issuance of shares of Class B Common Stock to Brantley IV pursuant to the Stock Subscription Agreement.

*Proposal 5.* To approve the issuance of up to ten million shares (prior to giving effect to the Reverse Stock Split) of our common stock in exchange for our Series AA preferred stock.

*Proposal 6.* To elect the members of our board of directors and to elect the members of the board of directors of Orion who will begin serving upon the consummation of the Transactions described in this proxy statement.

*Proposal 7.* To approve a new incentive plan, the Orion HealthCorp, Inc. 2004 Incentive Plan, to replace our 2001 Stock Option Plan.

*Proposal 8.* To approve the issuance of warrants to the current members of our board of directors.

*Proposal 9.* To transact such other business as may properly come before the meeting and any adjournment thereof.

If our stockholders adopt these proposals, we intend to complete the IPS Merger (and the issuance of Class A Common Stock to IPS debtholders) and the DCPS/MBS Merger and to issue the shares of Class B Common Stock to Brantley IV and the shares of our common stock in exchange for shares of our Series AA preferred stock. See The Transactions and Proposal Two through Proposal Five.

### Who May Attend and Vote?

Stockholders who owned SurgiCare common stock and Series AA preferred stock at the close of business on March 15, 2004 are entitled to notice of and to vote at the special meeting. We refer to this date in this proxy statement as the record date. As of the record date, we had \_\_\_\_\_ shares of SurgiCare common stock issued and outstanding and \_\_\_\_\_ shares of Series AA preferred stock issued and outstanding. Each share of SurgiCare common stock and Series AA preferred stock is entitled to one vote on each matter to come before the special meeting.

## How Do I Vote?

If you are a stockholder of record of our common stock or Series AA preferred stock, you may vote:

*In person.* If you attend the special meeting, you may deliver your completed proxy card in person or fill out and return a ballot that will be supplied to you at the special meeting.

*By mail.* If you choose to vote by mail, simply mark your proxy card, date and sign it, and return it in the postage-paid envelope provided.

By signing and returning the proxy card according to the enclosed instructions, you are enabling the individuals named on the proxy card (known as proxies) to vote your shares at the special meeting in the manner you indicate. We encourage you to sign and return the proxy card even if you plan to attend the special meeting. In this way, your shares will be voted even if you are unable to attend the meeting. Your shares will be voted as you direct on the proxy card. If a proxy card is signed and received by our corporate secretary, but no instructions are indicated, then the proxy will be voted FOR each of the proposals described in this proxy statement.

## What Does the Board of Directors Recommend?

The Board recommends that you vote FOR:

1. approving our amended and restated certificate of incorporation;
2. approving the issuance of shares of Class A Common Stock pursuant to the IPS Merger Agreement and the Debt Exchange Agreement;
3. approving the issuance of shares of Class C Common Stock and Class A Common Stock pursuant to the DCPS/MBS Merger Agreement;
4. approving the issuance of shares of Class B Common Stock to Brantley IV in connection with the financing transactions related to the Acquisitions;
5. approving the issuance of up to ten million shares (prior to giving effect to the Reverse Stock Split) of our common stock in exchange for our Series AA preferred stock;
6. electing the slates of directors listed in this proxy statement for the terms specified;
7. approving the adoption of the 2004 Incentive Plan;
8. approving the issuance of warrants to the current members of our board of directors; and
9. granting authority to the proxy holder to approve the transaction of any other business to properly come before the meeting.

If you submit the proxy card but do not indicate your voting instructions, the persons named as proxies on your proxy card will vote in accordance with the recommendations of the board of directors.

## What Vote is Required for Each Proposal?

Holders of record of our common stock and Series AA preferred stock are entitled to one vote per share on each proposal.

A majority of the shares entitled to be cast on a particular matter, present in person or represented by proxy, constitutes a quorum as to any proposal. Each proposal other than the restatement of the certificate of incorporation, and the election of directors must be approved by the affirmative vote of the holders of a majority of the shares of our common stock and Series AA preferred stock properly cast in person or by proxy at the special meeting, voting together as a single class.

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The restatement of our charter will require the vote of the majority of the outstanding shares of our common stock and Series AA preferred stock, each voting as a separate class and voting together as a single class.

Directors are elected by a plurality of the affirmative votes cast by those shares present in person, or represented by proxy, and entitled to vote at the special meeting, voting together as a single class. Stockholders may not cumulate votes in the election of directors.

Shares represented by proxies that indicate an abstention or a broker non-vote (that is, shares represented at the special meeting held by brokers or nominees as to which (i) instructions have not been received from the beneficial owners or persons entitled to vote and (ii) the broker or nominee does not have discretionary voting power on a particular matter) will be counted as shares that are present and entitled to vote on the matter for purposes of determining the presence of a quorum. Shares indicating an abstention and shares indicating a broker non-vote, however, will not constitute votes cast at the special meeting. Broker non-votes and abstentions will have the same effect as voting against the proposal to amend and restate the charter, but will have no effect on the outcome of the votes required to approve the other proposals described above.

The Transaction Documents require that we obtain the approval of Proposal One through Proposal Seven by a majority of the outstanding shares of our common stock and Series AA preferred stock, each voting as a separate class and voting together as a single class. Unless required by our certificate of incorporation or applicable law, rule or regulation, such requirement may be waived upon receipt of the necessary consents under the Transaction Documents.

**May I Change My Vote After I Return My Proxy Card?**

Yes. You may revoke a proxy any time before it is voted by:

returning to us a newly signed proxy card bearing a later date;

delivering a written instrument to our corporate secretary revoking the proxy card; or

attending the special meeting and voting in person.

**Who Will Bear the Cost of Proxy Solicitation?**

We will bear the expense of soliciting proxies. Our officers and regular employees (who will receive no compensation in addition to their regular salaries) may solicit proxies. In addition to soliciting proxies through the mail, our officers and regular employees may solicit proxies personally, as well as by mail, telephone, and telegram from brokerage houses and other stockholders. We will reimburse brokers and other persons for reasonable charges and expenses incurred in forwarding soliciting materials to their clients.

## THE TRANSACTIONS

### Introduction

On November 18, 2003, we entered into an agreement and plan of merger with IPS, which we amended and restated on February 9, 2004, relating to the merger of one of our wholly-owned subsidiaries with and into IPS, with IPS as the surviving corporation. On February 9, 2004, we entered into an agreement and plan of merger with DCPS and MBS relating to the merger of one of our wholly-owned subsidiaries, DCPS/MBS Acquisition, Inc., with and into MBS with MBS as the surviving corporation and the subsequent merger of DCPS with and into MBS, with MBS as the surviving corporation. We will issue, in transactions exempt from the registration requirements of the Securities Act of 1933, as amended (the Securities Act), shares of our Class A Common Stock in exchange for the shares of capital stock held by IPS stockholders and shares of our newly-created Class C Common Stock and our Class A Common Stock in exchange for the shares of capital stock held by MBS stockholders and the partnership interests held by the DCPS partners. We will also issue shares of our Class A Common Stock to certain IPS debtholders in connection with the IPS Merger. Once the Acquisitions are completed, IPS and the new DCPS/MBS entity will each be a wholly-owned subsidiary of SurgiCare. We are also planning to issue, pursuant to the Stock Subscription Agreement, shares of our newly-created Class B Common Stock, in a transaction exempt from the registration requirements of the Securities Act, to Brantley IV for its surrender of the Bridge Notes (under which there was an aggregate principal amount of \$2.055 million outstanding as of January 1, 2004) for cancellation and contribution of cash in an amount equal to \$6 million minus (a) the amount by which the aggregate principal amount of the SurgiCare Bridge Notes surrendered for cancellation exceeds \$490,000, (b) the amount by which the aggregate principal amount of the IPS Bridge Notes surrendered for cancellation exceeds \$790,000, and (c) the accrued but unpaid interest on such excesses. As of January 31, 2003, the aggregate amount of such excesses and accrued interest was \$778,950.

### Material Contacts and Transactions

Other than with respect to the transactions described in this proxy statement, neither we nor any of our subsidiaries is party, nor has been party during the prior two years, to any negotiations, transactions or material contact with IPS, DCPS, MBS or any of their respective subsidiaries or affiliates concerning any merger, consolidation, acquisition, tender offer for or other acquisition of any class of IPS's or DCPS/MBS's securities, election of directors of IPS or MBS or managers of DCPS or sale or other transfer of a material amount of assets of IPS, DCPS or MBS.

### SurgiCare's Reasons for the Transactions

In reaching its decision to approve the Transactions, our board of directors consulted with management, as well as with our financial advisors, independent accountants and legal advisors. In the board's view, the Transactions serve SurgiCare's strategic goals of enhancing its practice management capabilities for physicians and combining businesses that are complementary to its existing operations. The pro forma revenues for the combined entities for the year ended December 31, 2002 and nine months ended September 30, 2003, are in excess of \$42.4 million and \$31.8 million, respectively. See Unaudited Pro Forma Condensed Combined Financial Statements. The resulting, significantly larger company will be better equipped to achieve additional growth in its core businesses and to expand into new areas of outpatient healthcare delivery, including through future acquisitions. The combined company's strategy will be to develop a comprehensive, multi-dimensional, alternative site healthcare delivery system. This integrated healthcare services delivery model will focus on serving the needs of the healthcare providers who utilize our services and their clients and on better enabling them to meet the demands of the outpatient marketplace. Orion will also continue to supply IPS's, DCPS's and MBS's physician and practice management services and tools to their existing users and will seek to expand its client base for these services.



The board believed that current cash and cash equivalents would be insufficient to continue to fund our operations. The board concluded that if we do not complete the Equity Financing and the other Transactions, we will not be able to obtain the capital needed to fund our business plan and operations from other sources. The Equity Financing will allow us to address our liquidity issues, support our working capital requirements, strengthen our balance sheet and support our strategic goals and our business plan for Orion.

The board of directors received a written opinion from G. A. Herrera & Co., LLC, financial advisors, that, as of November 18, 2003, the Transactions as described in such written opinion, are fair to the SurgiCare stockholders from a financial standpoint and a supplement to the written opinion dated February 12, 2004. The supplement indicated that the changes to the terms of the Transactions since the issuance of the written opinion were of no material consequence. See Opinion of SurgiCare's Financial Advisor below. Copies of the opinion and supplement are attached hereto as Annex D.

The discussion above describes the material information and factors considered by our board in its review of the Acquisitions. Members of our board of directors evaluated these factors in light of their knowledge of our business and the industry in which we operate and their business judgment. In view of the wide variety of factors considered, our board did not find it practicable to, and did not, make specific assessments of, quantify or otherwise attempt to assign relative weights to the specific factors considered in reaching its determination. The determination to approve the Acquisitions was made after consideration of all of the factors as a whole. In addition, individual members of our board may have given different weight to different factors.

#### **Opinion of SurgiCare's Financial Advisor**

The board of directors has received a written opinion from G. A. Herrera & Co., LLC ( GAH ), financial advisors, that as of November 18, 2003, the Transactions, as described in such written opinion, are fair to the SurgiCare stockholders from a financial standpoint. Because certain terms of the Transactions changed since GAH issued its opinion, on February 12, 2004, GAH provided a supplement to its written opinion indicating that such changes were of no material consequence. Copies of the opinion and supplement are attached hereto as Annex D.

GAH is a Houston based private financial advisory and consulting firm with proven expertise in merger and acquisition advisory services, debt and equity placements, valuations, fairness opinions, impairment studies and expert testimony. GAH has completed numerous fairness opinions for public and private transactions. GAH's active participation in the valuation field and specific healthcare industry expertise provides GAH with extensive knowledge with respect to valuation theory and Internal Revenue Service rulings and guidelines which are significant factors in the determination of fairness opinions. Requests for bids were submitted to three investment banking firms, and GAH was selected based upon its ability to meet the necessary time frames and its fees. There have been no other material relationships and none are contemplated between SurgiCare (or its affiliates) and GAH (or any of its affiliates).

GAH opined on the consideration that will be paid in the Transactions. GAH was not involved in recommending the amount of consideration. In arriving at its opinion, GAH considered available financial data as well as other relevant business and industry factors including, the following:

the nature and history of the business;

the economic outlook in general and the current condition and prospects for SurgiCare's business;

the total stockholders' equity, liquidity and financial condition of SurgiCare;

the historical and future earning capacity of SurgiCare;

the dividend paying capacity of SurgiCare;

SurgiCare's goodwill or other intangible value;

relevant sales of SurgiCare stock and the economic impact of the Transactions; and

the market price of public companies engaged in the same or similar lines of business as SurgiCare.

The approaches and methodologies used by GAH in preparing the opinion did not comprise an examination in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the fair presentation of financial statements or other financial information presented in accordance with generally accepted accounting principles. GAH expressed no opinion and accepted no responsibility for the accuracy and completeness of the financial information or other data provided to GAH by SurgiCare. GAH assumed that the financial and other information provided to GAH was accurate and complete, and GAH relied upon this information in performing their valuation for purposes of our engagement of GAH.

GAH did not make an independent valuation or appraisal of the assets or liabilities of SurgiCare and were not furnished with any such evaluation or appraisal. For purposes of this engagement and report, GAH made no investigation of, and assumed no responsibility for, the titles to, or any liens against, the assets of SurgiCare or the Transactions. Neither did GAH attempt to determine what the Transactions or the shares of SurgiCare might have sold for in the public or private market or account for the costs that might have been incurred if shares of SurgiCare had been sold. GAH assumed there were no hidden or unexpected conditions associated with SurgiCare or the Transactions that would adversely affect the Transactions or the opinion prepared by GAH.

GAH completed a valuation analysis to compare the net equity value of SurgiCare compared to SurgiCare stockholders value after the Transactions using an income approach, a comparable public company approach, and a comparable private transaction approach. GAH's opinion, as of the date of the report, was that the terms and conditions of the Transactions are fair to the stockholders from a financial standpoint.

#### **Interests of Certain Persons in the Transactions**

Except as disclosed below, none of SurgiCare's directors or executive officers, nominees for directors or any proposed directors or directors or executive officers of Orion or its subsidiaries has any substantial interest, direct or indirect, by security holdings or otherwise in the Transactions. We do not, however, believe that any of these interests presents a material conflict of interest.

Some of SurgiCare's executive officers, directors, and proposed directors and executive officers of Orion or its subsidiaries have interests in the Transactions that are different from, or are in addition to, your interests. Certain officers of SurgiCare, IPS, DCPS and MBS will enter into employment contracts with Orion and therefore may have a special interest in completing the Transactions. Their arrangements follow:

Keith G. LeBlanc, the current Chief Executive Officer of SurgiCare, will continue to run the SurgiCare business of Orion. He will enter into an employment agreement with Orion and will become president of Orion, reporting to its board of directors. He has been nominated for election to the Orion board of directors. As of January 31, 2004, and prior to giving effect to the Reverse Stock Split, he owned 80,000 shares (0.3%) of our common stock and warrants to purchase 3,284,616 shares of our common stock. These holdings would convert to approximately 336,461 shares of Class A Common Stock, which together is approximately 1.6% of the Fully-Diluted Orion Shares.

Terrence L. Bauer, the current President and Chief Executive Officer of IPS, will continue to run the IPS business of Orion. He will enter into an employment agreement with Orion and will become Chief Executive Officer of Orion, reporting to its board of directors. He has been nominated for election to the Orion board of directors. As of December 31, 2003, he owned 200,000 shares (7.1%) of IPS's common stock, which would convert to approximately 14,200 shares of Class A Common Stock, which is approximately 0.07% of the Fully-Diluted Orion Shares.

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Stephen H. Murdock, the current Chief Financial Officer of IPS, will enter into an employment agreement to become Chief Financial Officer of Orion.

Dennis Cain, the current President of DCPS, will enter into an employment agreement to become the Chief Executive Officer of DCPS/MBS. Pursuant to the DCPS/MBS Merger Agreement, he may have the authority to appoint a member to any advisory board established by the Orion board of directors. As of January 31, 2004, he and his wife together owned, directly and indirectly, 100% of the total partnership interests in DCPS. All of the partnership interests would convert to approximately 606,061 shares of Class C Common Stock, subject to retroactive adjustment, which together with the 75,758 shares of Class A Common Stock to be issued at the direction of Mr. Cain or Mr. Smith is, on an as-converted basis, approximately 3.3% of the Fully-Diluted Orion Shares.

Tom M. Smith, the current President of MBS, will enter into an employment agreement to become the President and Chief Operating Officer of DCPS/MBS. Pursuant to the DCPS/MBS Merger Agreement, he may have the authority to appoint a member to any advisory board established by the Orion board of directors. As of January 31, 2004, he owned 890 shares (89%), and has an option to buy another 10 shares (1%), of MBS's common stock, which together, assuming exercise of the option, would convert to approximately 545,455 shares of Class C Common Stock, subject to retroactive adjustment, which together with the 75,758 shares of Class A Common Stock to be issued at the direction of Mr. Cain or Mr. Smith is, on an as-converted basis, approximately 3.0% of the Fully-Diluted Orion Shares, assuming that the fair market value of the SurgiCare common stock (based on the average of the daily average of the high and low price per share over the five trading days immediately prior to the closing) is less than \$0.70. If the fair market value of SurgiCare common stock (based on the same calculation) is equal to or greater than \$0.70, such holding would convert to approximately 720,000 shares of Class C Common Stock, subject to retroactive adjustment, which together with the 75,758 shares of Class A Common Stock to be issued at the direction of Mr. Cain or Mr. Smith would be, on an as-converted basis, approximately 3.8% of the Fully-Diluted Orion Shares (as adjusted for the number of additional shares issuable pursuant to the DCPS/MBS Merger Agreement if the fair market value is equal to or greater than \$0.70).

Orion will enter into agreements to employ Messrs. LeBlanc, Bauer, Murdock, Cain and Smith in the capacities described above. The Form of Employment Agreement is attached as Annex E to this Proxy Statement. The initial term of each agreement is five years. The agreements provide that Orion may pay bonuses to the executives upon the attainment of objectives determined by the board of directors. By entering into these employment agreements, the executives will agree not disclose confidential information or engage in an activity that interferes with Orion until the second anniversary of (i) the end of the executive's employment agreement or (ii) termination of the executive's employment ( Non-Competition Period ). If an executive's employment is terminated without cause, the agreements provide for continuation of the executive's base salary until the expiration of the Non-Competition Period and a minimum bonus of 50% of the average of the bonus payments made to the executive in the two years immediately preceding the termination. All options would also vest at that time. Orion's base annual salary commitments under the employment agreements are as follows: \$240,000 to each of Keith G. LeBlanc and Terrence L. Bauer; and, \$175,000 to each of Stephen H. Murdock, Dennis Cain and Tom M. Smith.

Phillip C. Scott, the current Chief Financial Officer of SurgiCare, owned 80,000 shares (0.3%) of our common stock and warrants to purchase 3,284,616 shares of our common stock as of January 31, 2004 and prior to giving effect to the Reverse Stock Split. These holdings would convert to approximately 336,461 shares of Class A Common Stock, which together is approximately 1.6% of the Fully-Diluted Orion Shares. We are currently negotiating a new employment agreement with Mr. Scott to replace his existing employment agreement.

SurgiCare is seeking approval to issue warrants to purchase 25,000 shares of Class A Common Stock to each of Bruce Miller, Michael A. Mineo, Sherman Nagler and Jeffrey J. Penso, its current directors, as

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compensation for their services as directors of SurgiCare. See Proposal Eight Approval of Warrant Issuances. 25,000 shares of Class A Common Stock is approximately 0.1% of the Fully-Diluted Orion Shares.

Paul H. Cascio and Michael J. Finn, each of whom is a nominee to become a director of Orion, are affiliated with Brantley Partners, a private equity firm with offices in Ohio and California. Since the firm's inception in 1987, it has been a lead investor in over 40 privately held companies in a variety of manufacturing, technology and service industries throughout the United States. Brantley Partners and its affiliates have approximately \$300 million of committed capital under management.

Mr. Cascio and Mr. Finn are general partners of the general partner of Brantley Venture Partners II, L.P., Brantley Venture Partners III, L.P. and Brantley IV and limited partners of those funds. Mr. Cascio is director, vice president, secretary and a stockholder of Brantley Capital Corporation, and vice president and secretary of Brantley Capital Management, L.L.C. Mr. Finn is the president and a stockholder of Brantley Capital Corporation and a manager and co-owner of Brantley Capital Management, L.L.C. Brantley Capital Management, L.L.C. serves as investment adviser for, and receives advisory fees from, Brantley Capital Corporation, Brantley Venture Partners, L.P., Brantley Venture Partners II, L.P., Brantley Venture Partners III, L.P. and Brantley IV.

SurgiCare and IPS have Bridge Notes outstanding to a wholly-owned subsidiary of Brantley in aggregate principal amounts of \$665,000 and \$1,390,000, respectively, as of January 31, 2004. Pursuant to the Stock Subscription Agreement, Brantley IV will purchase shares of new Class B Common Stock by surrendering the Bridge Notes for cancellation and contributing cash in an amount equal to \$6 million minus (a) the amount by which the aggregate principal amount of the SurgiCare Bridge Notes surrendered for cancellation exceeds \$490,000, (b) the amount by which the aggregate principal amount of the IPS Bridge Notes surrendered for cancellation exceeds \$790,000, and (c) the accrued but unpaid interest on such excesses. The aggregate amount of these excesses and accrued interest was \$778,950 as of January 31, 2004.

Brantley Capital Corporation and Brantley Venture Partners III, L.P. each hold debt of IPS and are party to the Debt Exchange Agreement. Pursuant to the Debt Exchange Agreement, Brantley Capital Corporation and Brantley Venture Partners III, L.P. are entitled to receive Class A Common Stock with a fair market value (based on the daily average of the high and low price per share of SurgiCare common stock over the five trading days immediately prior to the closing) equal to the amount owing to it under its loan to IPS.

Upon closing of the Transactions, Brantley IV will own shares of Class B Common Stock and Brantley Venture Partners III, L.P. and Brantley Capital Corporation will own shares of Class A Common Stock. See The Equity Financing and The IPS Merger below. By virtue of their affiliations with Brantley Venture Partners III, L.P., Brantley IV, Brantley Capital Corporation and Brantley Capital Management, L.L.C., Messrs. Cascio and Finn may be deemed to possess beneficial ownership of the shares of Class B Common Stock to be held by Brantley IV and the shares of Class A Common Stock to be held by Brantley Capital Corporation and Brantley Venture Partners III, L.P., which together will initially represent, on an as-converted basis, approximately 54.1% of the Fully-Diluted Orion Shares. Assuming everything else remains the same, the percentage interest of Brantley IV upon conversion will continually increase, since the conversion factor for the Class B Common Stock is designed to yield additional shares of Class A Common Stock, or portions thereof, necessary to approximate the unpaid portion of the return of the original purchase price for the Class B Common Stock, plus an amount equal to nine percent (9%) per annum on the amount of the original purchase price, without compounding, from the date the Class B Common Stock was first issued to the date of conversion. Messrs. Cascio and Finn disclaim beneficial ownership of such shares except to the extent of their pecuniary interests therein.

## THE IPS MERGER

*This section of the proxy statement describes the material aspects of the proposed IPS Merger, including the IPS Merger Agreement. While we believe that the description covers the material terms of the IPS Merger, this summary may not contain all of the information that is important to you. You should read this entire proxy statement and the other documents we refer to carefully for a more complete understanding of the IPS Merger and the related transactions.*

*Unless otherwise indicated, all share amounts give effect to the Reverse Stock Split described in this proxy statement. Unless otherwise indicated, all share amounts and percentages are based on the assumptions described in the section Summary Term Sheet Assumptions and are therefore subject to change if such assumptions are not accurate at the time of the closing of the Acquisitions.*

### Vote Required for the IPS Merger

Pursuant to our certificate of incorporation and applicable Delaware law, we do not require the approval of our stockholders to consummate the IPS Merger. However, we are required by our certificate of incorporation and Delaware law to obtain the approval majority of each class of our stockholders, voting as separate classes, and voting together as a single class, in order to amend and restate our certificate of incorporation. In addition, American Stock Exchange rules require that we obtain the approval of our stockholders for the issuance of Class A Common Stock in connection with the IPS Merger. The Transaction Documents require that we obtain our stockholders' the approval of the IPS Merger and all of the related proposals in this proxy statement (other than the proposal to amend the terms of the warrants and the proposal to issue warrants to the current members of our board of directors). The Transaction Documents specifically require that these proposals which require approval (other than the proposal to issue Class A Common Stock in exchange for our Series AA preferred stock) be approved by a majority of the outstanding shares of our common stock and Series AA preferred stock, each voting as a separate class and voting together as a single class.

### Completion and Effectiveness of the IPS Merger

The IPS Merger will be completed when all of the conditions to completion of the IPS Merger, as specified in the IPS Merger Agreement, are satisfied or, to the extent legally permissible, waived, including the adoption of the IPS Merger Agreement by the stockholders of IPS. The IPS Merger will become effective upon the filing of a certificate of merger with the Delaware Secretary of State.

We are working toward completing the IPS Merger as quickly as possible. We expect to complete the IPS Merger promptly after the meeting of our stockholders.

### Structure and Effect of the IPS Merger and Consideration Paid

*Structure and Effect.* To effectuate the IPS Merger, we formed a subsidiary, IPS Acquisition, Inc., that will be merged into IPS, with IPS as the surviving corporation. Following the IPS Merger, IPS will be a wholly-owned subsidiary of SurgiCare.

*Consideration.* When the IPS Acquisition is completed, and based on the assumptions used in this proxy statement, the IPS equityholders and certain IPS debtholders affiliated with Brantley IV will receive an aggregate of approximately 4,364,072 shares of Class A Common Stock (which will represent approximately 20.8% of the Fully-Diluted Orion Shares) in exchange for their shares of IPS common and preferred stock and all debt, including accrued interest, owed under certain notes issued by IPS having an aggregate principal amount of approximately \$3,256,619 and \$593,100 of debt in respect of accrued dividends.

### **Terms of the Class A Common Stock**

The terms of the Class A Common Stock, including its rights and preferences, are discussed in Proposal One Amended and Restated Certificate of Incorporation and are governed by the Amended and Restated Certificate of Incorporation attached as Annex L to this proxy statement.

### **Certain Material U.S. Federal Income Tax Consequences of the IPS Merger**

The following discussion briefly summarizes certain material U.S. federal income tax considerations relating to the IPS Merger that may be relevant to holders of SurgiCare common stock. The discussion is based upon the currently existing provisions of the Internal Revenue Code (the Code), existing and proposed Treasury Regulations promulgated thereunder, Internal Revenue Service (IRS) rulings and pronouncements, and judicial decisions, all in effect as of the date hereof and all of which are subject to change (possibly retroactively) at any time. This summary does not address all tax considerations that may be relevant; in particular, it does not address any tax considerations under state, local or foreign laws, or any tax considerations that may be relevant to certain stockholders in light of their particular circumstances. This summary also does not address any tax considerations that may be relevant to IPS stockholders, MBS stockholders, DCPS stockholders, Brantley IV or any of its affiliated entities, any stockholder who acquired SurgiCare common stock upon the exercise of an option or otherwise as compensation, or any optionholders, debtholders or warrant holders of any company. Finally, this summary does not address any tax consequences of the IPS Merger or of any related transactions other than as specifically set forth below.

*IPS Merger.* Neither SurgiCare nor the holders of Surgicare common stock should recognize any taxable gain or loss for U.S. federal income tax purposes as a result of the issuance of shares of Class A Common Stock in exchange for the shares of IPS stock held by IPS stockholders in IPS Merger. However, see Loss Limitations below.

*Debt Exchange.* If the Class A Common Stock that is exchanged for the debt owing to affiliates of Brantley IV by IPS pursuant to the Debt Exchange Agreement has a fair market value that is lower than the amount of the debt for which it is exchanged, IPS will recognize taxable cancellation of indebtedness income. The amount of such income will generally be equal to the difference between the amount of the debt and the fair market value of the Class A Common Stock exchanged therefor.

*Loss Limitations.* As a result of the IPS Merger and related transactions, it is expected that the use of any existing net operating losses of SurgiCare and IPS will be severely limited following the transactions.

### **Accounting Treatment of the IPS Merger**

The IPS Merger will be treated as a reverse acquisition for accounting purposes. Statement of Financial Accounting Standards No. 141 requires that in a business combination effected through the issuance of shares or other equity interests, as in the case of the IPS Merger, a determination be made as to which entity is the accounting acquirer. This determination is principally based on the relative voting rights in the combined entity held by existing stockholders of each of the combining companies, the composition of the board of directors of the combined entity, and the expected composition of the executive management of the combined entity. Based on an assessment of the relevant facts and circumstances existing with respect to the IPS Merger, it has been determined that IPS will be the acquirer for accounting purposes, even though IPS will be a subsidiary of SurgiCare.

Accordingly, the IPS Merger will be treated as a reverse acquisition, meaning that the purchase price, comprised of the fair value of the shares issued to current stockholders of SurgiCare, plus applicable transaction costs, will be allocated to the fair value of SurgiCare's tangible and intangible assets and liabilities, with any excess being considered goodwill. Upon closing of the IPS Merger, IPS will be treated as the continuing reporting entity, and thus IPS's historical results will become those of the combined

company. The combined company's results will include the results of both SurgiCare and IPS commencing on the date of closing of the merger. For more information, see "Unaudited Pro Forma Condensed Combined Financial Statements" beginning on page 46 of this proxy statement.

### **Regulatory Matters**

We are not aware of any governmental approvals or actions that are required to complete the IPS Merger, apart from standard regulatory notifications and approvals in connection with transfer of health care businesses. We plan to provide appropriate regulatory notification, seek any required governmental approval, and take any other necessary action. No waiting periods or filing requirements imposed by U.S. federal antitrust laws are applicable to the IPS Merger.

SurgiCare will file two additional listing applications with the American Stock Exchange. One additional listing application will cover the Reverse Stock Split and reclassification of SurgiCare's common stock as Class A Common Stock. The second additional listing application will cover the shares of Class A Common Stock issuable pursuant to the IPS Merger and the other transactions discussed herein. The Transaction Documents require that the shares of Class A Common Stock issuable thereunder be authorized for listing on the American Stock Exchange, subject to official notice of issuance, as a condition to closing.

### **The IPS Merger Agreement**

We will acquire IPS by merging IPS Acquisition, Inc., a wholly-owned subsidiary of SurgiCare which we refer to as the IPS merger sub, with and into IPS, with IPS as the surviving corporation. It has been determined that IPS will be the acquirer for accounting purposes, as described above in "Accounting Treatment of the IPS Merger." As a consequence of the merger, IPS will become a wholly-owned subsidiary of SurgiCare. The following summary of the IPS Merger Agreement is qualified in its entirety by reference to the complete text of the IPS Merger Agreement, which is attached as Annex A to this proxy statement. We urge you to read the full text of the IPS Merger Agreement. The transaction in which certain debtholders are receiving Class A shares in connection with the merger is governed by the Debt Exchange Agreement attached as Annex F to this proxy statement.

*Effective Time.* The IPS Merger will become effective upon the filing of a certificate of merger with the Secretary of State of the State of Delaware or such later time as may be specified in the certificate of merger. The filing of the certificate of merger will occur as soon as practicable but not later than three business days after the day on which all of the conditions to completion of the IPS Merger are satisfied or waived, including the required stockholder approvals, or at such other time as SurgiCare and IPS may agree in writing.

*Conversion of Securities.* Upon completion of the IPS Merger, and based upon the assumptions described above in "Summary Term Sheet Assumptions", holders of IPS common stock and preferred stock and certain IPS debtholders will receive an aggregate of approximately 4,364,072 shares of our Class A Common Stock (representing approximately 20.8% of the Fully-Diluted Orion Shares). The aggregate amount of shares to be received by the IPS stockholders is the amount of SurgiCare shares outstanding immediately after giving effect to the amendments to SurgiCare's charter, but prior to the closing of the Transactions, assuming cashless exercise of all in-the-money options and warrants, less the shares received by the debtholders pursuant to the Debt Exchange Agreement. Options and warrants will be deemed in-the-money if they have an exercise price of less than the greater of \$0.55 or the fair market value (based on the daily average of the high and low price per share of SurgiCare common stock over the five trading days immediately prior to closing). Changes in the closing price will affect the number of SurgiCare shares deemed outstanding for purposes of this calculation and thus will affect the aggregate number of shares to be received by the IPS stockholders.

Pursuant to the Debt Exchange Agreement, each debtholder party thereto is entitled to receive Class A Common Stock with a fair market value (based on the daily average of the high and low price

per share of SurgiCare common stock over the five trading days immediately prior to the closing) equal to the aggregate amount of principal and interest owing to the debtholder under its loan to IPS. Pursuant to the Debt Exchange Agreement, Brantley Capital Corporation is also entitled to receive Class A Common Stock with a fair market value (based on the daily average of the high and low price per share of SurgiCare common stock over the five trading days immediately prior to the closing) equal to the amount of certain accrued dividends owed to it by IPS.

At the effective time of the IPS Merger, each share of IPS common stock and preferred stock, issued and outstanding immediately prior to the effective time of the IPS Merger (other than shares as to which appraisal rights pursuant to the DGCL have been exercised), will be cancelled and automatically converted into the right to receive shares of our Class A Common Stock pursuant to a ratio to be calculated for each class of stock pursuant to the terms of the IPS Merger Agreement. At the effective time of the IPS Merger, each share held in treasury of IPS or any subsidiary of IPS or owned by SurgiCare or its subsidiaries immediately prior to the effective time of the IPS Merger will be cancelled and extinguished, no conversion of those shares will occur and no payment will be made for those shares.

No fractional shares will be issued in connection with the IPS Merger. Instead, each holder of shares of IPS common stock and/or preferred stock who otherwise would be entitled to a fraction of a share (after aggregating all fractional shares to be received by such holder) will receive from SurgiCare an amount of cash, without interest, equal to the product of the average of the daily average of the high and low price per share of SurgiCare common stock on the American Stock Exchange for the five trading days immediately preceding the closing of the IPS Merger, as adjusted to account for the Reverse Stock Split.

The shares of our Class A Common Stock that IPS stockholders and certain IPS debtholders will receive in connection with the IPS Merger will be issued in a transaction exempt from the registration requirements of the Securities Act and any applicable state securities laws and may not be transferred until we register such shares under the Securities Act or unless the shares are transferred in a transaction not requiring registration under the Securities Act, such as a transfer pursuant to Rule 144 under the Securities Act. The IPS stockholders and debtholders receiving shares of Class A Common Stock will be third-party beneficiaries to the registration rights agreement between Orion and Brantley IV. Until the first anniversary of the date of the registration rights agreement, the IPS stockholders and debtholders will be permitted to cause Orion to add their shares of Class A Common Stock to a registration statement on which Brantley IV's shares are being registered. A form of the registration rights agreement is attached hereto as Annex G.

*Exchange Agent.* As soon as practicable after the effective time of the IPS Merger (but in any event within five business days), Registrar and Transfer Company, or another bank or trust company designated by SurgiCare and reasonably satisfactory to IPS, in its capacity as exchange agent, will send a transmittal letter to each former IPS stockholder. The transmittal letter will be accompanied by instructions on how to obtain shares of SurgiCare common stock in exchange for shares of IPS common stock and/or preferred stock. IPS stockholders should not send their certificates until they receive the transmittal materials from the exchange agent.

*IPS Stock Options and Warrants.* In connection with the IPS Merger, the exercisability of all outstanding IPS stock options under the IPS 1996 Long-Term Incentive Plan will be accelerated. Immediately following the effective time, all such outstanding IPS stock options not exercised prior to the effective time of the IPS Merger will be cancelled without payment of any consideration.

IPS has issued warrants to purchase 150,000 shares of its Series C preferred stock to Bank Austria Creditanstalt Corporate Finance, Inc. ( Bank Austria ). At the effective time, Bank Austria's warrants to purchase IPS stock will be converted to warrants to purchase the number of shares of SurgiCare Class A Common Stock that would have been received by the holder of Bank Austria's warrants if the unexercised portion of those warrants had been exercised immediately prior to the effective time.



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Warrants to purchase 100,000 shares of IPS common stock held by Brantley Venture Partners III, L.P. and Brantley Capital Corporation are required to be terminated without consideration as a condition to the closing of the IPS Merger.

*Appraisal Rights.* Under Delaware law, holders of shares of IPS common stock and preferred stock are entitled to exercise appraisal rights if they:

are holders of issued and outstanding shares of IPS common stock or preferred stock immediately prior to the effective time of the IPS Merger;

have not voted in favor of the IPS Merger nor consented thereto in writing; and

have properly demanded their appraisal rights.

Shares to which appraisal rights are applicable will not be converted into the right to receive shares of our Class A Common Stock unless and until such time as these shares become ineligible for appraisal.

Each IPS stockholder who has not consented to the IPS Merger in writing will receive, within 10 days of the effective date of the IPS Merger, notice that the IPS Merger has been approved and that he or she is entitled to appraisal rights. The notice will attach a copy of Section 262 of the Delaware General Corporation Law (the "DGCL") pertaining to the appraisal rights of the IPS stockholders and will include the effective date of the IPS Merger.

Within 20 days of the mailing of the notice, any IPS stockholder who is entitled to appraisal rights must notify us in writing if he or she is demanding appraisal of his or her shares. Within 120 days of the effective date of the IPS Merger, any IPS stockholder who has not consented to the IPS Merger and who has made a written demand for appraisal may file a petition within the Delaware Court of Chancery demanding a determination of the value of the stock of all IPS stockholders entitled to appraisal.

Also within 120 days of the effective date of the IPS Merger and upon written request, any IPS stockholder demanding appraisal rights may request a statement from SurgiCare setting forth the aggregate number of shares not voted in favor of, or consenting to, the IPS Merger and with respect to which demands for appraisal have been received and the aggregate numbers of holders of these shares. This statement will be mailed within 10 days of SurgiCare's receipt of the request for the statement or within 10 days after expiration of the period for delivery of demands, whichever is later.

Within 60 days of the effective date of the IPS Merger, any IPS stockholder may withdraw his or her demand for appraisal and accept shares of our Class A Common Stock and other terms of the IPS Merger by providing written notice to us.

*Conditions to Closing.* The obligations of SurgiCare and IPS to consummate the IPS Merger are subject to the satisfaction or waiver of a number of conditions, including:

Obtaining all necessary approvals of the SurgiCare and IPS stockholders;

No governmental entity or court shall have enacted, threatened, issued, promulgated, enforced or entered any law, rule, regulation, judgment, decree, injunction, executive order or award that is then in effect, pending or threatened and has, or would have, the effect of making the IPS Merger illegal or otherwise prohibiting consummation of the IPS Merger or the other transactions;

Expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which provides for advance notification of business combinations of greater than a minimum size by the Federal Trade Commission and the Antitrust Division of the Department of Justice;

Shares of Class A Common Stock to be issued in the IPS Merger shall have been authorized for listing on the American Stock Exchange, subject to official notice of issuance;

The DCPS/MBS Merger shall have been consummated concurrently with the IPS Merger;

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The Equity Financing with Brantley IV, and the debt exchange with certain affiliates of Brantley IV, described herein shall have been consummated;

The continued truthfulness and accuracy of the representations and warranties in all material respects, except that representations and warranties that address matters only as of a particular date shall remain true and correct in all material respects as of such date (representations or warranties that are qualified by materiality shall continue to be true and accurate in all respects) and the performance or compliance with all agreements and covenants required by the IPS Merger Agreement, and receipt from the other party of a certificate of an officer certifying to the foregoing;

The receipt of all material governmental consents, approvals or other authorizations legally required to consummate the IPS Merger from all governmental authorities and receipt by IPS and SurgiCare of all required third party consents in respect of material contracts;

No event, circumstance, occurrence, change or effect shall have occurred since November 18, 2003 which, individually or in the aggregate, have had or would have a material adverse effect, or pose a material risk of having a material and adverse effect, on the business, operations, condition, assets, results of operations or prospects of SurgiCare or IPS;

No action shall have been brought, be pending or have been threatened by any government entity or any person that seeks to prevent or delay the consummation of the IPS Merger or the other transactions, seeks to restrain or prohibit SurgiCare or IPS merger subsidiaries or impose limitations on SurgiCare or IPS merger subsidiaries ability to own or dispose of any portion of the business or assets of IPS or IPS capital stock or that would reasonably be expected to, individually or in the aggregate, have a material adverse effect on the business, operations, condition, assets, results of operations or prospects of IPS;

The number of shares as to which appraisal rights pursuant to the DGCL have been exercised shall not exceed 15% of the outstanding common stock of IPS.

All directors of IPS and each IPS subsidiary shall have resigned from their positions as directors of IPS and each IPS subsidiary, except as agreed by IPS and SurgiCare.

Each of Keith G. LeBlanc, Terrence L. Bauer and Stephen H. Murdock shall have entered into an employment agreement with SurgiCare which is in full force and effect, must be employed by their respective employers immediately prior to the merger, and cannot have indicated an intention to terminate his employment, and all other employment agreements with such individuals shall have been terminated;

SurgiCare and IPS each having received a legal opinion from the counsel to the other party;

All existing registration rights of holders of IPS common and/or preferred stock shall have been terminated and SurgiCare shall have received a certificate to such effect signed by an officer of IPS;

There shall be no more than 30 holders of IPS capital stock immediately prior to the merger that (i) have not delivered to SurgiCare executed investment letters certifying as to their investor status under the securities laws or (ii) have returned investment letters indicating that they are not accredited investors;

No tender offer, exchange offer, merger or other transaction in respect of shares of capital stock or material assets of IPS or SurgiCare or their subsidiaries shall have been commenced by any person;

SurgiCare shall have delivered resignations from each director of SurgiCare and, except as agreed by SurgiCare and IPS, each SurgiCare subsidiary; and the SurgiCare board shall consist of Terrence L. Bauer, Keith G. LeBlanc, two individuals designated by Brantley IV, and three outside directors reasonably satisfactory to IPS (Messrs. Crane, McIntosh and Valley are satisfactory to IPS), and the officers of SurgiCare shall be Mr. Bauer as Chief Executive Officer, Mr. LeBlanc as President, and Stephen H. Murdock as Chief Financial Officer;

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The capital structure of each SurgiCare subsidiary shall have been resyndicated in a manner satisfactory to IPS;

SurgiCare shall have amended and restated its certificate of incorporation and by-laws; and

All shares of SurgiCare Series AA preferred stock shall have been redeemed or converted into shares of SurgiCare common stock.

The Debt Exchange Agreement and the Stock Subscription Agreement require that the conditions to closing of the IPS Merger Agreement have been satisfied.

*Representations and Warranties.* The IPS Merger Agreement contains representations and warranties by each of the parties. The representations and warranties will not survive the closing of the IPS Merger. See the copy of the agreement attached as Annex A for additional information regarding the representations and warranties included.

*Conduct of Business Prior to Closing.* Each of SurgiCare and IPS has agreed on behalf of itself and its subsidiaries, subject to certain exceptions, between the execution of the IPS Merger Agreement and the effective time of the IPS Merger, to:

conduct its businesses and the business of its subsidiaries in the ordinary course of business and in a manner consistent with past practice; and

use its reasonable best efforts to preserve substantially intact its business organization and goodwill and to keep available the services of its (and its subsidiaries ) current officers, employees and consultants and to preserve its (and its subsidiaries ) current relationships with customers, suppliers, licensors, licensees and other persons with which it and its subsidiaries have significant business relations.

Each of SurgiCare and IPS has also agreed that, except as contemplated by the IPS Merger Agreement, and subject to certain other exceptions, prior to the effective time of the IPS Merger, without the prior written agreement of the other party, it shall neither do any of the following nor permit its subsidiaries to do any of the following:

Amend or otherwise change its charter or bylaws;

Issue, sell, pledge, dispose of, or authorize for issuance, sale, pledge or disposal, equity securities or equity equivalent securities, except for the issuance of common stock upon the exercise of options and warrants outstanding as of the date of the IPS Merger Agreement;

Authorize, declare or set aside any dividend payments or other distribution with respect to any of its stock;

Reclassify, combine, split, subdivide or redeem, purchase or otherwise acquire, directly or indirectly, any of its stock or issue or authorize the issuance of any other securities in respect of, or in lieu of or in substitution for shares of its capital stock;

Acquire or agree to acquire or sell any interest in any corporation, partnership or other business or any assets constituting a business or a portion of a business;

Sell, lease, license, encumber or otherwise dispose of any of its or its subsidiaries' real property or improvements;

Incur any indebtedness for borrowed money or issue any debt securities or assume guarantee or endorse the obligations of any person, or make any loans or advances, except with a maturity of not more than one year and in a principal amount not, in the aggregate, in excess of \$100,000 or under its existing revolving credit facility in the ordinary course of business and consistent with past practice;

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Enter into any contracts or agreement requiring payment or receipt of payment in excess of \$250,000, or modify, renew or waive any material provision of, breach or terminate any of its or its subsidiaries' existing material contracts;

Make or authorize any capital expenditures which were not disclosed to the other party in connection with the IPS Merger Agreement;

Except for the acceleration of vesting of unvested stock options and warrants outstanding on the date of the IPS Merger Agreement, waive any stock repurchase or acceleration rights, otherwise amend or change the terms of any options, warrants or restricted stock, or reprice options granted under its stock option plan or warrants or authorize cash payments in exchange for any options or warrants;

Increase compensation to its or its subsidiaries' officers or employees (including rights to severance or termination pay), except for increases in salaries or wages of employees other than directors, officers and key employees, in accordance with past practices and consistent with current budgets (and, in the case of SurgiCare, in the ordinary course of business, and as disclosed to IPS in connection with the IPS Merger Agreement), grant or amend any rights to severance or termination pay to, or enter into or amend any employment or severance agreement with any of its or its subsidiaries' directors, officers or employees (or, in the case of SurgiCare any person, except as required by previously existing contractual arrangements or required law) or forgive any indebtedness of any employee, or in the case of SurgiCare, enter into or amend any consulting, retirement or special pay arrangement with any person, except as required by previously existing contractual arrangements or applicable law;

Pay, discharge or satisfy any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise) in excess of \$100,000 in the aggregate, other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice, of liabilities reflected or reserved against in its balance sheet or incurred in the ordinary course of business, consistent with past practices, or cancel any indebtedness in excess of \$100,000 in the aggregate or waive any claims or rights of substantial value, or waive the benefits of, or agree to modify in any manner, any confidentiality, standstill or similar agreement to which it or any of its subsidiaries is a party;

Settle any action other than any settlement that involves only the payment of damages in an immaterial amount and does not involve injunctive or equitable relief or commence any litigation or arbitration;

Make or revoke any tax election, unless required by law, adopt or change any method of tax accounting, request any ruling or similar determination, enter into any closing agreement or settle any tax liabilities or take any action with respect to the computation of taxes or the preparation of a tax return that is inconsistent with past practices;

Change its accounting principles or procedures, other than certain required changes;

Subject to certain exceptions, establish, adopt, enter into, amend or terminate any collective bargaining agreement or certain employee benefit plans, other than to the extent required by such benefit employee plans or to comply with applicable law, or, unless consistent with past practice, make any material determinations not in the ordinary course of business, under any collective bargaining, certain employee benefit plans, or take any action or accelerate any rights or benefits;

Enter into or implement any stockholder rights plan or similar anti-takeover plan or device in a manner that could prevent or delay the consummation of the IPS Merger;

Agree in writing or otherwise take any of the actions described above; or

Take any action that would reasonably be expected to cause any representation and warranty given by it (and in the case of SurgiCare, given by the IPS merger sub) that is qualified by materiality to

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be untrue, any representation and warranty given by it (and in the case of SurgiCare, given by the IPS merger sub) that is not qualified by materiality to be untrue in any material respect, or would reasonably be expected to result in its (and in the case of SurgiCare, the IPS merger sub s) inability to satisfy certain conditions to closing.

*No Solicitation Provision.* Each of SurgiCare and IPS has agreed not to, and not to permit any of its subsidiaries, officers, directors, or agent to, directly or indirectly through any officer, director, agent or otherwise, initiate, solicit, negotiate, engage in discussions regarding, encourage or provide confidential information to facilitate any proposal or offer to acquire (i) any material part of its or its subsidiaries' business or properties (which includes, but is not limited to any part of such business or properties constituting 10% or more of its and its subsidiaries' net revenues, net income or assets) or (ii) any of its or its subsidiaries' capital stock. Each of SurgiCare and IPS has also agreed to cease and cause to be terminated all activities, discussions or negotiations with respect to any offer or proposal with respect to any such acquisition transaction other than the IPS Merger described herein. SurgiCare and IPS have each agreed to notify the other party orally within 24 hours (and in writing within 48 hours), of all inquiries and proposals that it may receive relating to any of the foregoing matters, such notice to set out the terms and conditions of such contact, inquiry or proposal, the identity of the person making it and the intent of the party providing the notice to furnish information to, or enter into discussions or negotiations with such person.

Notwithstanding the foregoing, prior to the effective time of the IPS Merger, the boards of directors of each of SurgiCare and IPS is not prohibited from:

Furnishing information to, or entering into and engaging in discussions or negotiations with, any person in response to an unsolicited written proposal or offer regarding an acquisition transaction; if only to the extent that:

the board of directors determines in good faith after consultation with its independent financial advisor and legal counsel, that the acquisition proposal would (or reasonably could) constitute a superior proposal, which is defined in the IPS Merger Agreement as a bona fide acquisition proposal by a third party for all of the outstanding capital stock of the party receiving the proposal or all of the assets of that party and its subsidiaries, not subject to financing approvals and due diligence condition, which the board of directors determines in its good faith judgment (after consultation with its financial advisor) to be significantly more favorable to the stockholders of that party from a financial point of view than the IPS Merger, taking into account all terms of such acquisition proposal, and which the board of directors determines in its good faith judgment is reasonably likely to be consummated, taking into account all legal and regulatory aspects of the proposal;

the board of directors determines in good faith after consultation with its legal counsel, that the failure to take such action would constitute a breach of the fiduciary duties of the board of directors to its stockholders under applicable law; and

the board of directors receives, prior to furnishing any such information or entering into any discussions or negotiations with such person, an executed confidentiality agreement on terms no less favorable to SurgiCare or IPS, as the case may be, than the confidentiality agreement between SurgiCare and IPS.

Withholding, withdrawing, qualifying or modifying its approval or recommendation of the IPS Merger or certain related actions, or proposing publicly to do so, in a manner adverse to the other party to the merger, or endorsing, approving, recommending or submitting to the stockholders another acquisition transaction, or proposing publicly to do so, or causing the party to enter into any letter of intent or other agreement or understanding related to a potential acquisition, if after receipt of a superior proposal, it determines in good faith, after taking into account advice from independent outside legal counsel with respect to its fiduciary duties to its stockholders under applicable law, that such action is required for the board to comply with its fiduciary obligations to

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the stockholders of that party under applicable law, but only at a time that is after the fifth business day after the other party to the IPS Merger Agreement receives written notice from the board that it intends to take such action. The written notice must specify the material terms and conditions of the superior proposal, identify the person making such proposal and state that the board intends to take an action described above. During the five business day period, the party whose board is proposing to take such action will provide full opportunity for the other party to the IPS Merger Agreement to propose such adjustment to the terms and conditions of the IPS Merger Agreement and the IPS Merger as would enable the board to proceed with its recommendation to its stockholders without taking such action.

*Events of Termination.* The IPS Merger Agreement may be terminated and the IPS Merger abandoned at any time prior to the effective time:

By mutual written consent duly authorized by the board of directors of each of SurgiCare and IPS;

By either SurgiCare or IPS if a governmental authority has taken any final and non-appealable action prohibiting the consummation of the IPS Merger (but the merger agreement cannot be terminated for this reason by a party whose failure to fulfill its obligations under merger agreement resulted in such action);

By either SurgiCare or IPS if the IPS Merger is not completed on or prior to May 14, 2004;

By either SurgiCare or IPS if the board of directors of the other party:

(i) withholds, withdraws, qualifies or modifies its approval or recommendation of the IPS Merger or certain related actions, or proposes publicly to do so, in a manner adverse to the other party to the merger, (ii) endorses, approves, recommends or submits to its stockholders another acquisition proposal, or proposed publicly to do so, or (iii) enters into any letter of intent, or other agreement or understanding relating to a proposed acquisition, in each case, if after receipt of a superior proposal it determines in good faith, after taking into account advice from independent outside legal counsel with respect to its fiduciary duties to its stockholders under applicable law, that such action is required for the board to comply with its fiduciary obligations to its stockholders under applicable law;

fails to recommend to its stockholders that they approve the issuance of shares of its stock in the IPS Merger or approve the IPS Merger, as the case may be, and that they give the other stockholder approvals required by the IPS Merger Agreement; or

fails to reconfirm the recommendation referred to in the foregoing bullet or announce that it does not recommend any alternative acquisition to the IPS Merger, within five business days after the other party requests in writing that such recommendation be reaffirmed.

By either SurgiCare or IPS if the other party has breached its non-solicitation agreements contained in the IPS Merger Agreement;

By either SurgiCare or IPS if a tender offer or exchange offer for 10% or more of the outstanding shares of the other party is commenced and the board of directors of that party fails to recommend against acceptance of such tender offer or exchange offer by its stockholders;

By either SurgiCare or IPS if either SurgiCare or IPS does not receive the required stockholder approval;

By either SurgiCare or IPS if the other party (and by IPS if the IPS merger sub) breaches a representation, warranty, covenant or agreement, or if any representation or warranty by such party becomes untrue, in either case such that the relevant closing conditions, subject to the materiality thresholds contained in such closing conditions, would not be satisfied;

By either SurgiCare or IPS prior to its stockholders meeting, upon written notice to the other party of the existence of a superior proposal in respect of which its board of directors authorized it to

enter a definitive agreement and the other party has not made, within five business days of receipt of notice, an offer which its board of directors determines, in good faith after consultation with its financial advisor is at least as favorable to its stockholders as the competing proposal; provided that termination will not be effective until the terminating party pays the termination fee described below;

By IPS, if a tender offer, exchange offer, merger or other transaction in respect of shares of capital stock of SurgiCare shall have been commenced by any person;

By SurgiCare, if a tender offer, exchange offer, merger or other transaction in respect of shares of capital stock of IPS shall have been commenced by any person; and

By either SurgiCare or IPS prior to its stockholders meeting, if after receipt of a superior proposal, the board of directors of such party determines in good faith, after consultation with legal counsel, that failure to (i) withhold, withdraw, qualify or modify its approval of the IPS Merger, or certain related transactions, or publicly propose to do so, (ii) endorse, approve, recommend or submit to the its stockholders an acquisition proposal it has received or publicly propose to do so or (iii) enter into any letter of intent, or other agreement or understanding relating to such acquisition proposal, and that the holding of a stockholders meeting for the approval of the IPS Merger described herein, would constitute a breach of its fiduciary duties to its stockholders; provided that termination will not be effective until the terminating party pays the termination fee described below.

*Fees and Expenses.* In the event the IPS Merger Agreement is terminated by either party (other than by mutual written consent or as result of final and non-appealable action taken by a governmental authority prohibiting the consummation of the IPS Merger or the failure to consummate the IPS Merger prior to May 14, 2004), then under the terms of the IPS Merger Agreement, the party responsible for triggering the underlying cause for the termination will reimburse the other party for all of its reasonable out-of-pocket expenses (including, without limitation, all fees and expenses of counsel, accountants, financing sources, appraisers, investment bankers, experts and consultants). Except as set forth above, each party to the IPS Merger Agreement will pay its fees and expenses.

Pursuant to the Stock Subscription Agreement, upon termination of the IPS Merger Agreement in specified circumstances, SurgiCare is required by the Stock Subscription Agreement to reimburse Brantley IV for its reasonable out-of-pocket expenses and/or to pay Brantley IV a non-refundable fee of \$3 million.

*Choice of Law.* The IPS Merger Agreement is governed by and construed in accordance with the laws of the State of New York.

## THE DCPS/MBS MERGER

*This section of the proxy statement describes the material aspects of the proposed DCPS/MBS Merger, including the DCPS/MBS Merger Agreement. While we believe that the description covers the material terms of the DCPS/MBS Merger, this summary may not contain all of the information that is important to you. You should read this entire proxy statement and the other documents we refer to carefully for a more complete understanding of the DCPS/MBS Merger and the related transactions.*

*Unless otherwise indicated, all share amounts give effect to the Reverse Stock Split described in this proxy statement. Unless otherwise indicated, all share amounts and percentages are based on the assumptions described in the section Summary Term Sheet Assumptions and are therefore subject to change if such assumptions are not accurate at the time of the closing of the Acquisitions.*

### Vote Required for the DCPS/MBS Merger

Under our certificate of incorporation and under Delaware law, we do not require the approval of our stockholders to consummate the DCPS/MBS Merger. However, we are required by our certificate of incorporation and Delaware law to obtain the approval majority of each class of our stockholders, voting as separate classes, and voting together as a single class, in order to amend and restate our certificate of incorporation. In addition, American Stock Exchange rules require that we obtain the approval of our stockholders for the issuance of our common stock in connection with the IPS Merger and the DCPS/MBS Merger. The Transaction Documents require that we obtain our stockholders' approval of the DCPS/MBS Merger and all of the related proposals in this proxy statement, other than the proposal to amend the terms of the warrants and issue warrants to the current members of our board of directors. The Transaction Documents specifically require that these proposals which require approval, other than the proposal to issue Class A Common Stock in exchange for our Series AA preferred stock, be approved by a majority of the outstanding shares of our common stock and Series AA preferred stock, each voting as a separate class and voting together as a single class.

### Completion and Effectiveness of the DCPS/MBS Merger

The DCPS/MBS Merger will be completed when all of the conditions to completion of the DCPS/MBS are satisfied or, to the extent legally permissible, waived, including the adoption of the DCPS/MBS Merger Agreement by the stockholders of IPS. The acquisition of DCPS/MBS will become effective upon the filing of certificates of merger with the Texas Secretary of State or such later time as may be specified in the certificates of merger.

We are working toward completing the Acquisitions as quickly as possible. We expect to complete the DCPS/MBS Merger promptly after the meeting of our stockholders.

### Structure and Effect of the DCPS/MBS Merger and Consideration Paid

*Structure and Effect.* To effectuate the DCPS/MBS Merger, we formed a subsidiary, DCPS/MBS Acquisition, Inc., that will be merged with and into MBS, with MBS as the surviving corporation. DCPS will subsequently be merged with and into MBS, with MBS as the surviving corporation. Following the Acquisitions, IPS and DCPS/MBS will both be wholly-owned subsidiaries of SurgiCare.

*MBS Merger Consideration.* When the MBS merger is completed and the fair market value of SurgiCare common stock (based on the average of the daily average of the high and low price per share over the five trading days immediately prior to the closing) is less than \$0.70, stockholders of MBS will receive:

an aggregate of \$2 million in cash, and

approximately 606,061 shares of Class C Common Stock  
in exchange for all of the outstanding stock of MBS.



Otherwise, the stockholders of MBS will receive:

an aggregate of \$1.4 million in cash, and

approximately 800,000 shares of Class C Common Stock  
in exchange for all of the outstanding stock of MBS.

The purchase price is subject to retroactive increase or decrease based on the financial results of the newly-formed DCPS/MBS entity in the two years following the DCPS/MBS Merger.

*DCPS Merger Consideration.* When the DCPS merger is completed, the partners of DCPS will receive:

an aggregate of \$1.5 million in cash,

subordinated promissory notes of SurgiCare in an aggregate principal amount of \$500,000, and

approximately 606,061 shares of Class C Common Stock  
in exchange for all of the outstanding partnership interests of DCPS.

The purchase price is subject to retroactive increase or decrease based on the financial results of the newly-formed DCPS/MBS entity in the two years following the DCPS/MBS Merger.

#### *Additional Issuances, Advances and Payments*

The DCPS/MBS Merger Agreement also provides for additional issuances, advances and payments as described in The DCPS/MBS Merger Agreement Additional Issuances, Advances and Payments on page 34.

#### *DCPS/MBS Ownership*

Based on the assumptions in this proxy statement, including the fair market value of our common stock being less than \$0.70, and assuming receipt of the maximum number of shares of Class A Common Stock pursuant to the earn-out provisions of the DCPS/MBS Merger Agreement, the DCPS and MBS equityholders will own approximately 8.4% of the Fully-Diluted Orion Shares.

#### **Terms of the Class C Common Stock**

The terms of the Class C Common Stock, including its rights and preferences, are discussed in Proposal One Amended and Restated Certificate of Incorporation and are governed by the Amended and Restated Certificate of Incorporation.

#### **Certain Material U.S. Federal Income Tax Consequences of the DCPS/MBS Merger**

The following discussion briefly summarizes certain material U.S. federal income tax considerations relating to the DCPS/MBS Merger that may be relevant to holders of SurgiCare common stock. The discussion is based upon the currently existing provisions of the Code, existing and proposed Treasury Regulations promulgated thereunder, IRS rulings and pronouncements, and judicial decisions, all in effect as of the date hereof and all of which are subject to change (possibly retroactively) at any time. This summary does not address all tax considerations that may be relevant; in particular, it does not address any tax considerations under state, local or foreign laws, or any tax considerations that may be relevant to certain stockholders in light of their particular circumstances. This summary also does not address any tax considerations that may be relevant to IPS stockholders, MBS stockholders, DCPS stockholders, Brantley IV or any of its affiliated entities, any stockholder who acquired SurgiCare common stock upon the exercise of an option or otherwise as compensation, or any optionholders, debtholders or warrant holders of any company. Finally, this summary does not address any tax consequences of the DCPS/MBS Merger or of any related transactions other than as specifically set forth below.



*MBS Merger.* Neither SurgiCare nor holders of SurgiCare common stock should recognize any taxable gain or loss for U.S. federal income tax purposes as a result of the MBS merger. However, see *Loss Limitations* below.

*DCPS Merger.* Neither SurgiCare nor holders of SurgiCare common stock should recognize any taxable gain or loss for U.S. federal income tax purposes as a result of the DCPS merger. Assuming that DCPS is a validly electing S corporation for U.S. federal income tax purposes and is not subject to certain special rules providing for a corporate-level tax on S corporations in certain circumstances, DCPS should not be liable for any corporate level U.S. federal income tax as a result of the DCPS merger. We believe that DCPS will not be liable for any such corporate-level U.S. federal income tax. If DCPS were not a validly electing S corporation or were otherwise subject to certain special rules, DCPS could become liable for a corporate-level tax as a result of the DCPS merger if the merger did not qualify as a tax-free reorganization. MBS would become liable for that corporate-level tax as a result of the merger of DCPS into MBS.

*Loss Limitations.* As a result of the DCPS/MBS Merger and related transactions, it is expected that the use of any existing net operating losses of SurgiCare and MBS will be severely limited following the Transactions.

#### **Accounting Treatment of the DCPS/MBS Merger**

SurgiCare intends to account for the DCPS/MBS Merger as a purchase transaction for financial reporting and accounting purposes in accordance with Statement of Financial Accounting Standards No. 141. After the DCPS/MBS Merger, the results of operations of DCPS/MBS will be included in the consolidated financial statements of SurgiCare. The purchase price, which is equal to the total consideration of cash, notes and new SurgiCare Class C Common Stock, will be allocated based on the fair values of the DCPS/MBS assets acquired and liabilities assumed. The amount of the purchase price in excess of the fair value of the net tangible assets of DCPS/MBS acquired will be recorded as goodwill and other tangible assets. For more information, see *Unaudited Pro Forma Condensed Combined Financial Statements* beginning on page 46 of this proxy statement.

#### **Regulatory Matters**

We are not aware of any governmental approvals or actions that are required to complete the DCPS/ MBS Merger, apart from standard regulatory notifications and approvals in connection with transfer of health care businesses. We plan to provide appropriate regulatory notification, seek any required governmental approval, and take any other necessary action. No waiting periods or filing requirements imposed by U.S. federal antitrust laws are applicable to the DCPS/MBS Merger.

SurgiCare will file two additional listing applications with the American Stock Exchange. One additional listing application will cover the Reverse Stock Split and reclassification of SurgiCare's common stock as Class A Common Stock. The second additional listing application will cover the shares of Class A Common Stock issuable upon conversion of the Class C Common Stock or otherwise pursuant to the DCPS/MBS Merger Agreement and the other transactions described in this proxy statement. The Transaction Documents require that the shares of Class A Common Stock issuable thereunder be authorized for listing on the American Stock Exchange, subject to official notice of issuance, as a condition to closing.

#### **The DCPS/MBS Merger Agreement**

We will acquire DCPS and MBS by merging DCPS/MBS Acquisition, Inc., a wholly-owned subsidiary of SurgiCare, with MBS, with MBS as the surviving corporation and then, immediately thereafter, merging DCPS with and into MBS, with MBS as the surviving corporation. As a consequence of the merger, DCPS/MBS will be a wholly-owned subsidiary of SurgiCare. The following summary of the DCPS/MBS Merger Agreement is qualified in its entirety by reference to the complete text of the

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DCPS/MBS Merger Agreement which is attached as Annex B to this proxy statement. We urge you to read the full text of the DCPS/MBS Merger Agreement.

*Effective Time.* The DCPS/MBS Merger will become effective upon the filing of certificates of merger with the Secretary of State of the State of Texas or such later time as may be specified in the certificates of merger. The filing of the certificates of merger will occur as soon as practicable but not later than three business days after the day on which all of the conditions to completion of the DCPS/MBS Merger are satisfied or waived, including the required stockholder approvals, or at such other time as SurgiCare and the DCPS/MBS Sellers may agree in writing.

### ***Conversion of Securities.***

#### *MBS*

At the effective time of the DCPS/MBS Merger, all of the shares of MBS common stock issued and outstanding immediately prior to the effective time of the DCPS/MBS Merger will be cancelled and automatically converted into the right to receive, in the aggregate:

If the fair market value of SurgiCare common stock (based on the average of the daily average of the high and low price per share over the five trading days immediately prior to the closing) is less than \$0.70,

an aggregate of \$2 million in cash, and

606,061 shares of Class C Common Stock in exchange for all of the outstanding stock of MBS, subject to retroactive adjustment.

Otherwise,

an aggregate of \$1.4 million in cash, and

800,000 shares of Class C Common Stock in exchange for all of the outstanding stock of MBS, subject to retroactive adjustment

Shares of MBS Common Stock as to which appraisal rights pursuant to Texas law have been exercised will not be converted to receive the applicable merger consideration pursuant to the provisions described above, but will have the rights described below under Appraisal Rights.

At the effective time of the DCPS/MBS Merger, each share of MBS common stock held in treasury of MBS or any subsidiary of MBS or owned by SurgiCare or its subsidiaries immediately prior to the effective time of the DCPS/MBS Merger will be cancelled and extinguished, no conversion of those shares will occur and no payment will be made for those shares. Furthermore, each share of common stock of DCPS/MBS Acquisition, Inc. issued and outstanding immediately prior to the effective time of the DCPS/MBS Merger will be converted and exchanged for one share of common stock of MBS, as the surviving corporation. No fractional shares will be issued in connection with the DCPS/MBS Merger. Instead, each holder of shares of MBS common stock who otherwise would be entitled to a fraction of a share (after aggregating all fractional shares to be received by such holder) will receive from SurgiCare a number of shares of Class C Common Stock rounded down to the nearest whole share.

The shares of SurgiCare common stock that MBS stockholders will receive in the merger will be issued in a transaction exempt from the registration requirements of the Securities Act and any applicable state securities laws and may not be transferred until we register such shares under the Securities Act or unless the shares are transferred in a transaction not requiring registration under the Securities Act, such as a transfer pursuant to Rule 144 under the Securities Act. The MBS stockholders will be third-party beneficiaries to the registration rights agreement between Orion and Brantley IV. Until the first anniversary of the date of the registration rights agreement, the MBS stockholders will be permitted to cause Orion to add their shares of Class A Common Stock (received upon conversion of the shares of Class C Common Stock or otherwise pursuant to the DCPS/MBS Merger Agreement) to a registration statement on which

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Brantley IV's shares are being registered. A form of the registration rights agreement is attached hereto as Annex G.

### *DCPS*

At the effective time of the DCPS/MBS Merger, all partnership interests in DCPS issued and outstanding immediately prior to the effective time of the DCPS/MBS Merger, will be cancelled and automatically converted into the right to receive, in the aggregate:

an aggregate of \$1.5 million in cash, and

subordinated promissory notes of SurgiCare in an aggregate principal amount of \$500,000, subject to retroactive adjustment (the DCPS Note); and

606,061 shares of Orion Class C Common Stock in exchange for all of the outstanding partnership interests of DCPS, subject to retroactive adjustment.

The shares of SurgiCare common stock that holders of DCPS partnership interests will receive in the merger will be issued in a transaction exempt from the registration requirements of the Securities Act and any applicable state securities laws and may not be transferred until we register such shares under the Securities Act or unless the shares are transferred in a transaction not requiring registration under the Securities Act, such as a transfer pursuant to Rule 144 under the Securities Act. The DCPS equityholders will be third-party beneficiaries to the registration rights agreement between Orion and Brantley IV. Until the first anniversary of the date of the registration rights agreement, the DCPS equityholders will be permitted to cause Orion to add their shares of Class A Common Stock (received upon conversion of the Class C Stock or otherwise pursuant to the DCPS/MBS Merger Agreement) to a registration statement on which Brantley IV's shares are being registered. A form of the registration rights agreement is attached hereto as Annex G.

### *Exchange Procedures*

At the closing of the DCPS/MBS Merger, certificates representing shares of Class C Common Stock will be exchanged for certificates representing MBS common shares and DCPS partnership interests as applicable.

### *Additional Issuances, Advances and Payments.*

Subject to any restrictions imposed by applicable law, SurgiCare agrees to provide, upon Dennis Cain's request, a loan to the DCPS equityholders in the amount of up to \$375,000 in the event that the DCPS/MBS Merger does not qualify as a tax-free reorganization under Section 368(a)(2)(D) of the Internal Revenue Code. Such loan will have the same interest rate and maturity date as that of the DCPS Note.

If the fair market value of SurgiCare common stock at the closing of the MBS merger (based on the average of the daily average of the high and low price per share over the five trading days immediately prior to the closing) is less than \$0.70, SurgiCare will pay Mr. Smith on April 1, 2005 an amount equal to the quotient of (a) the excess of 15% of the assumed incremental gain (as defined below) over \$435,000 divided by (b) 85%. The assumed incremental gain is the amount by which the value of the 606,061 shares of Class C Common Stock (based on the average of the daily average of the high and low price per share of SurgiCare common stock over the five trading days immediately prior to the closing as adjusted for the Reverse Stock Split) exceeds \$100,000. Mr. Smith will allocate and distribute any such payment to the MBS stockholders pro rata based on the respective federal income tax liabilities of the MBS stockholders in respect of the Class C Common Stock issued to the MBS stockholder upon the closing of the DCPS/MBS Merger.

Following the closing of the MBS merger, SurgiCare agrees to issue, subject to applicable securities laws, up to 75,758 shares of Class A Common Stock to such persons and entities as directed by Mr. Cain or Mr. Smith, which persons may be employees or customers of DCPS/MBS.

***Purchase Price Adjustments.***

*Clawback.* During 2004 and 2005, if the earnings before interest, taxes, depreciation and amortization ( EBITDA ) of DCPS/MBS (prior to deduction of any management fees payable to SurgiCare, excluding extraordinary or non-recurring gains and, for 2004, amounts paid to Tom M. Smith and Dennis Cain in excess of their base salaries prior to the closing) is less than \$1.6 million (the Negotiated Amount ), annually, SurgiCare is entitled to a return of debt and stock based on the following formula:

1) 125% of the difference between the actual EBITDA and the Negotiated Amount is referred to as the Payback Amount with respect to each of MBS and DCPS.

2) The stockholders of MBS forfeit to SurgiCare a number of shares of Class C Common Stock which, if converted, would represent a number of shares of Class A Common Stock equal to (x) the Payback Amount divided by (y) 3.3. Mr. Smith, on behalf of the MBS equityholders, may elect to pay some or all of the Payback Amount in cash.

3) The principal balance of the DCPS Note shall be reduced by the Payback Amount. If the Payback Amount exceeds the principal balance of the DCPS Note, SurgiCare may request that the DCPS equityholders forfeit to SurgiCare a number of shares of Class C Common Stock which, if converted, would represent a number of shares of Class A Common Stock equal to (x) the difference between the Payback Amount and the principal balance on the DCPS Note divided by (y) 3.3.

*Earn-out.* During 2004 and 2005, if the EBITDA of DCPS/MBS (prior to deduction of any management fees payable to SurgiCare, excluding extraordinary or non-recurring gains and, for 2004, amounts paid to Tom M. Smith and Dennis Cain in excess of their base salaries prior to the closing) is greater than the Negotiated Amount, annually, the DCPS/MBS equityholders will be entitled to additional cash and Class A Common Stock from Orion based on the following formula, which will be split equally between the DCPS equityholders and the MBS equityholders:

1) The difference between the actual EBITDA and the Negotiated Amount shall be multiplied by two (2) each year, and such amount shall be called the Additional Consideration Amount.

2) Twenty-five percent (25%) of the Additional Consideration Amount shall be paid by SurgiCare in cash.

3) The DCPS/MBS equityholders shall receive a number of shares of Class A Common Stock equal to seventy-five percent (75%) of the Additional Consideration Amount divided by 7.5.

4) The maximum earn-out to be paid out over the two year period shall consist of an aggregate of up to a maximum of \$1,012,500 in cash and up to a maximum of 465,000 additional shares of Class A Common Stock.

*Effect of Sale; Termination of Key Employees without Cause.* In the event that (a) the employment of Tom M. Smith is terminated by SurgiCare without Cause (as defined in his employment agreement) or (b) SurgiCare sells all of the capital stock, or all or substantially all of the assets, of the DCPS/MBS merger sub to an unaffiliated third party (other than in connection with an acquisition of all or substantially all of SurgiCare):

1) On or prior to the first anniversary of the Closing Date, the MBS equityholders shall be entitled to receive the maximum earn-out amount of \$450,000 in cash and 240,000 shares of Class A Common Stock.

2) After the first anniversary of the Closing Date but on or prior to the second anniversary, the Additional Consideration Amount shall be payable to the MBS equityholders in respect to the second

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year of operations of the DCPS/MBS merger sub, as pro-rated for a full year based upon the EBITDA of the DCPS/MBS merger sub for such year as of the last day of the month of such termination or sale.

3) On or prior to the second anniversary of the Closing Date, the claw-back provisions under the letter of intent as described above shall terminate with respect to the MBS equityholders, provided that no such termination of the claw-back provisions shall require SurgiCare to return any amount already forfeited in accordance with same.

In the event that (a) the employment of Dennis Cain is terminated by SurgiCare without Cause (as defined in his employment agreement) or (b) SurgiCare sells all of the capital stock, or all or substantially all of the assets, of the DCPS/MBS merger sub to an unaffiliated third party (other than in connection with an acquisition of all or substantially all of SurgiCare):

1) On or prior to the first anniversary of the Closing Date, the DCPS equityholders shall be entitled to receive the maximum earn-out amount of \$562,500 in cash and 225,000 shares of Class A Common Stock.

2) After the first anniversary of the Closing Date but on or prior to the second anniversary, the Additional Consideration Amount shall be payable to the DCPS equityholders in respect to the second year of operations of the DCPS/MBS merger sub, as pro-rated for a fully year based upon the EBITDA of the DCPS/MBS merger sub for such year as of the last day of the month of such termination or sale.

3) On or prior to the second anniversary of the Closing Date, the claw-back provisions under the letter of intent as described above shall terminate with respect to the DCPS equityholders, provided that no such termination of the claw-back provisions shall require SurgiCare to return any amount already forfeited in accordance with same.

*Certain Additional Terms of the Merger.* In the event that, during the earn-out period, the DCPS/ MBS merger sub performs billing and collection, contracting and/or management services for SurgiCare, SurgiCare agrees to pay the DCPS/MBS merger sub a rate 10% greater than the minimal amount needed to cover all costs associated with such services. SurgiCare also agrees to assist the DCPS/MBS merger sub in the development and marketing of a surgery center division of the company. In addition, during the earn-out period, SurgiCare agrees that it will not purchase any medical billing services provided by DCPS/ MBS from any person other than DCPS/MBS at a rate equal to or higher than the rate provided by DCPS/MBS. If, during the earn-out period, SurgiCare proposes to purchase such services from a person other than DCPS/MBS at a rate lower than the rate payable to DCPS/MBS, SurgiCare will provide DCPS/MBS with the opportunity to provide such services to SurgiCare at the lower rate.

In the event that SurgiCare shall establish an advisory board, each of Tom M. Smith and Dennis Cain shall have the right to appoint one member, so long as he continues to own 50% of the SurgiCare shares issued to him in consideration for the merger.

*Right of First Refusal.* In the event that SurgiCare or its successors desire to sell the DCPS/MBS merger sub prior to the later of (i) the third anniversary of the Closing Date or (ii) the date on which the promissory notes issued to Dennis Cain and Tom M. Smith have been paid in full, the DCPS/MBS Sellers will be given the right to match any offer received by SurgiCare or its successors, unless all or substantially all of SurgiCare is to be acquired pursuant to such offer. The DCPS/MBS Sellers may elect to transfer shares of Class A Common Stock or Class C Common Stock in satisfaction of all or portion of the applicable purchase price, provided that the value of any such share transferred to SurgiCare shall be deemed to equal 85% of the average of the closing prices of the Class A Common Stock over the five trading days immediately prior to the closing of such sale.

*Terms of Debt.* The DCPS Note shall be due and payable after three (3) years, and shall bear interest at an eight percent (8%) annual rate, with monthly interest payments and no prepayment penalty. The DCPS Note shall be subordinated to SurgiCare's senior bank debt on terms satisfactory to its senior

lender. SurgiCare shall have the right to set off amounts owed by DCPS to SurgiCare against amounts owing under the DCPS Note. Upon a material default by SurgiCare under the DCPS Note, the noncompetition agreement contained in the employment agreement with Dennis Cain shall terminate.

*Appraisal Rights.* Under Texas law, holders of shares of MBS common stock are entitled to exercise appraisal rights if they:

are holders of issued and outstanding shares of MBS common stock that was entitled to vote on the MBS merger;

have not voted in favor of the MBS merger nor consented thereto in writing; and

have properly demanded their appraisal rights.

Shares to which appraisal rights are applicable will not be converted into the right to receive the applicable merger consideration unless and until such time as these shares become ineligible for appraisal.

The MBS stockholders who have not consented to the MBS merger in writing will receive, within 10 days of the effective date of the MBS merger, notice that the MBS merger has been approved and that he or she is entitled to appraisal rights. The notice will attach a copy of Article 5.12 of the Texas Business Corporation Act pertaining to the appraisal rights of the MBS stockholders and will include the effective date of the MBS merger.

Within 20 days of the mailing of the notice, any MBS stockholder who is entitled to appraisal rights must notify us in writing that he or she is demanding for payment the fair value (as of the date the MBS merger was approved by the shareholders) of his or her shares. The demand shall state the number of shares owned by such dissenting MBS stockholder and the fair value of the shares as estimated by him or her. If within 60 days of the effective date of the MBS merger, MBS and any dissenting MBS stockholder do not reach agreement as to the value of the shares, then such dissenting MBS stockholder who has not consented to the MBS merger and who has made a written demand for appraisal may file a petition in any court of competent jurisdiction in Harris County demanding a determination of the fair value of his or her shares.

*Conditions to Closing.* The obligations of SurgiCare, DCPS and MBS to consummate the DCPS/MBS Merger are subject to the satisfaction or waiver of a number of specified conditions, including:

Obtaining all necessary approvals of the SurgiCare stockholders;

No governmental entity or court shall have enacted, threatened, issued, promulgated, enforced or entered any law, rule, regulation, judgment, decree, injunction, executive order or award that is then in effect, pending or threatened and has, or would have, the effect of making the DCPS/MBS Merger illegal or otherwise prohibiting consummation of the DCPS/MBS Merger or the other transactions;

Expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which provides for advance notification of business combinations of greater than a minimum size by the Federal Trade Commission and the Antitrust Division of the Department of Justice;

The shares of Class A Common Stock issuable upon conversion of the shares of Class C Common Stock issuable in the DCPS/MBS Merger and the Shares of Class A Common Stock issuable pursuant to the earn-out shall have been authorized for listing on the American Stock Exchange, subject to official notice of issuance;

The IPS Merger shall have been consummated concurrently with the DCPS/MBS Merger;

The Equity Financing with Brantley IV, and the debt exchange with certain affiliates of Brantley IV described herein shall have been consummated;



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The continued truthfulness and accuracy of the representations and warranties in all material respects, except that representations and warranties that address matters only as of a particular date shall remain true and correct in all material respects as of such date (representations or warranties that are qualified by materiality shall continue to be true and accurate in all respects) and the performance or compliance in all material respects with all agreements and covenants required by the DCPS/MBS Merger Agreement, and receipt from the other party of a certificate of an officer certifying to the foregoing;

The receipt of all material governmental consents, approvals or other authorizations legally required to consummate the DCPS/MBS Merger from all governmental authorities and receipt by DCPS, MBS and SurgiCare of all required third party consents in respect of material contracts;

No event, circumstance, occurrence, change or effect shall have occurred since the date of the DCPS/MBS Merger Agreement which, individually or in the aggregate, have had or would have a material adverse effect, or pose a material risk of having a material and adverse effect, on the business, operations, condition, assets, results of operations or prospects of SurgiCare and its subsidiaries, taken as a whole, or DCPS and MBS taken as a whole;

No action shall have been brought, be pending or have been threatened by any government entity or any person that seeks to prevent or delay the consummation of the DCPS/MBS Merger or the other transactions, seeks to restrain or prohibit SurgiCare or DCPS/MBS or impose limitations on SurgiCare or DCPS/MBS ability to own or dispose of any portion of the business or assets of DCPS or MBS or that would reasonably be expected to, individually or in the aggregate, have a material adverse effect on the business, operations, condition, assets, results of operations or prospects of DCPS and MBS taken as a whole;

Each of Dennis Cain and Tom M. Smith shall have entered into an employment agreement with SurgiCare which is in full force and effect, must be employed by their respective employers immediately prior to the merger, and cannot have indicated an intention to terminate his employment, and all other employment agreements with such individuals shall have been terminated;

SurgiCare having received a legal opinion from the counsel to DCPS and MBS, and DCPS and MBS having received a legal opinion from the counsel of SurgiCare and DCPS/MBS;

All existing registration rights of holders of MBS common shares and DCPS partnership interests shall have been terminated and SurgiCare and DCPS/MBS shall have received a certificate to such effect signed by the DCPS/MBS Sellers and by an officer of each of DCPS and MBS;

All loans, guarantees or other obligations of DCPS or MBS to each other or to any of their affiliates have been terminated without the payment of any consideration and, except as otherwise agreed to in writing by SurgiCare, all agreements among any of the foregoing shall have been terminated without cost to DCPS or MBS;

Each of the DCPS/MBS Sellers shall have entered into a subordination agreement with each of SurgiCare's senior lenders in form and substance satisfactory to SurgiCare and such senior lenders;

SurgiCare shall have delivered resignations from each director of SurgiCare and the SurgiCare board shall consist of Terrence L. Bauer, Keith G. LeBlanc, two individuals designated by Brantley IV, and three outside directors reasonably satisfactory to DCPS and MBS, and the officers of SurgiCare shall be Mr. Bauer as Chief Executive Officer, Mr. LeBlanc as President, and Stephen H. Murdock as Chief Financial Officer; and

SurgiCare shall have amended and restated its certificate of incorporation and by-laws.

No appraisal rights shall have been exercised with respect to any MBS common shares.

The Debt Exchange Agreement and the Stock Subscription Agreement require that the conditions to closing of the DCPS/MBS Merger Agreement have been satisfied.

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*Representations and Warranties.* The DCPS/MBS Merger Agreement contains representations and warranties by each of the parties. The representations and warranties will not survive the closing of the DCPS/MBS Merger. We urge you to read the complete text of such representations and warranties in the DCPS/MBS Merger Agreement attached as Annex B to this proxy statement.

*Conduct of Business Prior to Closing.* Each of SurgiCare, DCPS and MBS has agreed on behalf of itself and its subsidiaries, as applicable, that, subject to certain exceptions, between the execution of the DCPS/MBS Merger Agreement and the effective time of the DCPS/MBS Merger, to:

conduct its businesses and the business of its subsidiaries, as applicable, in the ordinary course of business and in a manner consistent with past practice; and

use its reasonable best efforts to preserve substantially intact its business organization and goodwill and to keep available the services of its (and its subsidiaries as applicable) current officers, employees and consultants and to preserve its (and its subsidiaries as applicable) current relationships with members or other customers, suppliers, licensors, licensees and other persons with which it and its subsidiaries, as applicable, have significant business relations.

Each of SurgiCare, DCPS and MBS has also agreed that, subject to certain exceptions, prior to the effective time of the DCPS/MBS Merger, without the prior written agreement of the other party, it shall neither do any of the following nor permit its subsidiaries, as applicable, to do any of the following:

Amend or otherwise change its charter or bylaws or equivalent organizational documents;

Issue, sell, pledge, dispose of, or authorize for issuance, sale, pledge or disposal, equity securities or equity equivalent securities, or any other ownership interest, except for the issuance of shares of SurgiCare common stock upon the exercise of options and warrants outstanding as of the date of the DCPS/MBS Merger Agreement;

Authorize, declare or set aside any dividend payments or other distribution with respect to any of its stock or other ownership interests; provided, however, that each of DCPS and MBS may dividend out excess cash prior to the closing of the DCPS/MBS Merger subject to certain exceptions;

Reclassify, combine, split, subdivide or redeem, purchase or otherwise acquire, directly or indirectly, any of its stock or other ownership interests or issue or authorize the issuance of any other securities in respect of, or in lieu of or in substitution for shares of its capital stock or other ownership interests;

Acquire or agree to acquire or sell or agree to sell any interest in any corporation, partnership or other business or any assets constituting a business or a portion of a business;

Sell, lease, license, encumber or otherwise dispose of any of its or its subsidiaries, as applicable, real property or improvements;

Incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse the obligations of any person, or make any loans or advances, except for revolving indebtedness under existing revolving loan agreements of SurgiCare, DCPS and MBS, incurred in the ordinary course of business and consistent with past practice, indebtedness under any additional notes evidencing additional loans made by Lakepoint Acquisition, Inc. to SurgiCare after October 24, 2003, and other indebtedness with a maturity of not more than one year and in a principal amount not, in the aggregate, in excess of \$100,000 with respect to SurgiCare and in excess of \$25,000 with respect to DCPS and MBS;

Enter into any contracts or agreements requiring payment or receipt of payment in excess of \$250,000 with respect to SurgiCare and in excess of \$100,000 with respect to DCPS and MBS, or modify, amend, renew or waive any material provision of, breach or terminate any of its or its subsidiaries, as applicable, existing material contracts;

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Make or authorize any capital expenditures which were not disclosed in connection with the DCPS/MBS Merger Agreement;

Except for the acceleration of vesting of unvested SurgiCare stock options and warrants outstanding on the date of the DCPS/MBS Merger Agreement, waive any stock repurchase or acceleration rights, amend or change the terms of any options, warrants or restricted stock, or reprice options or warrants or authorize cash payments in exchange for any options or warrants;

Increase compensation to its or its subsidiaries, as applicable, officers or employees (including rights to severance or termination pay), except for increases in salaries or wages of employees other than directors, officers and key employees, in accordance with past practices and consistent with current budgets (and, in the case of SurgiCare in the ordinary course of business, and as disclosed to DCPS and MBS in connection with the DCPS/MBS Merger Agreement), grant or amend any rights to severance or termination pay to, or enter into or amend any employment or severance agreement with any of its or its subsidiaries, as applicable, directors, officers or employees (or, in the case of SurgiCare any person, except as required by previously existing contractual arrangements or required law) or forgive any indebtedness of any of its or its subsidiaries, as applicable, employees;

Pay, discharge or satisfy any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise) in excess of \$100,000 in the aggregate with respect to SurgiCare and \$50,000 in the aggregate with respect to DCPS and MBS, other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice, of liabilities reflected or reserved against in its balance sheet or incurred in the ordinary course of business, consistent with past practices, or cancel any indebtedness in excess of \$100,000 in the aggregate with respect to SurgiCare and \$50,000 in the aggregate with respect to DCPS and MBS, or waive any claims or rights of substantial value, or waive the benefits of, or agree to modify in any manner, any confidentiality, standstill or similar agreement to which it or any of its subsidiaries, as applicable, is a party;

Settle any action other than any settlement that involves only the payment of damages in an immaterial amount and does not involve injunctive or other equitable relief, or commence any litigation or arbitration;

Make or revoke any tax elections, unless required by applicable law, adopt or change any method of tax accounting, request any ruling or similar determination, enter into any closing agreement or settle any tax liabilities or take any action with respect to the computation of taxes or the preparation of a tax return that is inconsistent with past practice;

Change its accounting principles or procedures, other than certain required changes;

Subject to certain exceptions, establish, adopt, enter into, amend or terminate any collective bargaining agreement or certain employee benefit plans, other than to the extent required by such employee benefit plans or to comply with applicable law, or, take any action to accelerate any rights or benefits, or, unless consistent with past practice, make any material determinations not in the ordinary course of business, under any collective bargaining agreement or certain employee benefit plans;

Enter into or implement any stockholder rights plan or any similar anti-takeover plan or device in a manner that could prevent or delay the consummation of the DCPS/MBS Merger;

Agree in writing or otherwise to take any of the actions described above; or

Take any action that would reasonably be expected to cause any representation and warranty given by it (and in the case of SurgiCare, given by DCPS/MBS) that is qualified by materiality to be untrue, any representation and warranty given by it (and in the case of SurgiCare, given by DCPS/MBS) that is not qualified by materiality to be untrue in any material respect, or would

reasonably be expected to result in its (and in the case of SurgiCare, DCPS/MBS's) inability to satisfy certain conditions to closing.

***No Solicitation Provisions.***

Each of DCPS and MBS has agreed not to directly or indirectly initiate, solicit, negotiate, engage in discussions regarding, encourage or provide nonpublic confidential information to facilitate, and DCPS and MBS will not, and will use their reasonable best efforts to cause any officer, director or employee of DCPS or MBS, or any attorney, accountant, investment banker, financial advisor or other agent retained by DCPS or MBS not to, directly or indirectly, initiate, solicit, negotiate, engage in discussions regarding, encourage or provide nonpublic or confidential information to facilitate, any proposal, offer or inquiry to acquire a material part of the business or properties of DCPS or MBS (which shall include, but not be limited to, a part of the business or properties of DCPS or MBS constituting 10% or more of the net revenues, net income or the assets of DCPS or MBS or any capital stock or other ownership interests of DCPS or MBS) whether by merger, consolidation, recapitalization, purchase of assets, tender offer or otherwise and whether for cash, securities or any other consideration or combination thereof. DCPS and MBS have also agreed to immediately cease and cause to be terminated all activities, discussions or negotiations with any parties with respect to any of the transactions described in the previous sentence, other than in connection with the DCPS/MBS Merger.

***Observer Rights.*** Dennis Cain, the current President of DCPS, will have the right to be present as an observer at all meetings of the board of directors of Orion or any of its committees so long as he continues to own at least 50% of the shares of Class C Common Stock issued to him in connection with the DCPS/MBS Merger (or Class A Common Stock issued upon conversion of the Class C Common Stock or otherwise). Similarly, Tom M. Smith, the current President of MBS, will have the right to be present as an observer at all meetings of the Board of Directors of Orion or any of its committees so long as he continues to own at least 50% of the shares of Class C Common Stock issued to him in connection with the DCPS/MBS Merger (or Class A Common Stock issued upon conversion of the Class C Common Stock or otherwise). The board of directors, however, may exclude either observer from attending any meeting where all members of management are excluded or which relates to a matter in which the observer has a material business or financial interest (other than by reason of his interest as a stockholder). Orion will pay for all reasonable expenses incurred by the observers in connection with their attendance of meetings of the board of directors of Orion or any of its committees.

***Events of Termination.*** The DCPS/MBS Merger Agreement may be terminated and the DCPS/ MBS Merger abandoned at any time prior to the effective time, notwithstanding any requisite approval and adoption of the DCPS/MBS Merger Agreement and such transactions, as follows:

By mutual written consent duly authorized by the board of directors of each of SurgiCare and MBS, and the general partner and limited partners of DCPS;

By either SurgiCare, on the one hand, or DCPS and MBS, on the other hand, by giving written notice to the other party, if there is any applicable law or order of a governmental authority which is final and nonappealable preventing the consummation of the DCPS/MBS Merger (but the merger agreement cannot be terminated for this reason by a party whose failure to fulfill its obligations under the merger agreement resulted in such action);

By either SurgiCare, on the one hand, or DCPS and MBS, on the other, by giving written notice to the other party, if the DCPS/MBS Merger is not completed on or prior to May 14, 2004;

By either SurgiCare, on the one hand, or DCPS and MBS, on the other hand, by giving written notice to the other party, if SurgiCare does not obtain the required stockholder approval;

By SurgiCare, by giving written notice to DCPS and MBS, upon a breach of any representation, warranty, covenant or agreement on the part of DCPS or MBS set forth in the DCPS/MBS Merger Agreement, or if any representation or warranty of DCPS and MBS has become untrue, in either case such that the relevant closing conditions, subject to the materiality thresholds contained

in such closing conditions, would not be satisfied (but the merger agreement cannot be terminated for this reason by SurgiCare if SurgiCare is, at the time, in breach of the merger agreement);

By DCPS and MBS by giving written notice to SurgiCare, upon a breach of any representation, warranty, covenant or agreement on the part of SurgiCare or DCPS/MBS set forth in the DCPS/MBS Merger Agreement, or if any representation or warranty of SurgiCare or DCPS/MBS has become untrue, in either case such that the relevant closing conditions, subject to the materiality thresholds contained in such closing conditions, would not be satisfied (but the merger agreement cannot be terminated for this reason by DCPS and MBS if DCPS or MBS is, at the time, in breach of the merger agreement);

*Fees and Expenses.* In the event that the DCPS/MBS Merger Agreement is terminated due to SurgiCare's failure to obtain the required stockholder approval, SurgiCare will reimburse DCPS and MBS for all reasonable out-of-pocket expenses incurred by or on behalf of DCPS or MBS. In all other circumstances, each party to the DCPS/MBS Merger Agreement will pay its fees and expenses.

*Choice of Law.* The DCPS/MBS Merger Agreement is governed by and construed in accordance with the laws of the State of Texas.

## THE EQUITY FINANCING

*This section of the proxy statement describes the material aspects of the proposed Equity Financing. While we believe that the description covers the material terms of the Equity Financing, this summary may not contain all of the information that is important to you. You should read this entire proxy statement and the other documents we refer to carefully for a more complete understanding of the Equity Financing and the related transactions.*

*Unless otherwise indicated, all share amounts give effect to the Reverse Stock Split described in this proxy statement. Unless otherwise indicated, all share amounts and percentages are based on the assumptions described in the section Summary Term Sheet Assumptions and are therefore subject to change if such assumptions are not accurate at the time of the closing of the Acquisitions.*

### Vote Required for the Equity Financing

We are required by our certificate of incorporation, Delaware law and the Transaction Documents to obtain the approval majority of each class of our stockholders, voting as separate classes, and voting together as a single class, in order to amend and restate our certificate of incorporation to authorize the Class B Common Stock. In addition, American Stock Exchange rules require that we obtain the approval of our stockholders for the issuance of our Class B Common Stock.

### The Equity Financing

Brantley IV has, through an entity wholly-owned by Brantley IV, bridge loans outstanding to both SurgiCare and IPS. Pursuant to the Stock Subscription Agreement, Brantley IV will purchase shares of Class B Common Stock by surrendering the Bridge Notes for cancellation and contributing cash in an amount equal to \$6 million minus (a) the amount by which the aggregate principal amount of the SurgiCare Bridge Notes surrendered for cancellation exceeds \$490,000, (b) the amount by which the aggregate principal amount of the IPS Bridge Notes surrendered for cancellation exceeds \$790,000, and (c) the accrued but unpaid interest on such excesses. As of January 31, 2004, the aggregate principal amount of the outstanding SurgiCare Bridge Notes is \$665,000 and the aggregate principal amount of the IPS Bridge Notes is \$1.39 million, which results in an aggregate excess principal amount of \$775,000. The accrued interest on this excess was \$3,950 as of January 31, 2004.

*Shares Received by Brantley IV.* Brantley IV will receive a number of shares of Class B Common Stock equal to 1.02 times the aggregate number of outstanding shares of Class A Common Stock immediately after giving effect to the amendments to SurgiCare's charter, but prior to the closing of the Transactions (giving effect to conversion of our Series AA preferred stock and cashless exercise of in-the-money options or warrants) divided by .49. Options and warrants will be deemed in-the-money if they have an exercise price of less than the greater of \$0.55 or the fair market value (based on the daily average of the high and low price per share of SurgiCare common stock over the five trading days immediately prior to closing). Changes in the closing price will affect the number of SurgiCare shares deemed outstanding for purposes of this calculation and thus will affect the aggregate number of shares to be received by Brantley IV.

Based on the assumptions used in this proxy statement, Brantley IV would receive approximately 9,084,395 shares of Class B Common Stock. Prior to the DCPS/MBS Merger, the shares of Class B Common Stock issued to Brantley IV will represent, on an as-converted basis, approximately 54.5% of the Fully-Diluted Orion Shares (as adjusted for the shares of Class A Common Stock and Class C Common Stock issuable pursuant to the DCPS/MBS Merger Agreement), and will initially represent, on an as-converted basis, approximately 49.9% of the Fully-Diluted Orion Shares. Assuming everything else remains the same, the percentage interest of Brantley IV upon conversion will continually increase, since the conversion factor for the Class B Common Stock is designed to yield additional shares of Class A Common Stock, or portions thereof, necessary to approximate the unpaid portion of the return of the original purchase price for the Class B Common Stock, plus an amount equal to nine percent (9%) per

annum on the amount of the original purchase price, without compounding, from the date the Class B Common Stock was first issued to the date of conversion.

#### **Terms of the Class B Common Stock**

The terms of the Class B Common Stock, including its rights and preferences, are discussed in Proposal One Amended and Restated Certificate of Incorporation and are governed by the Amended and Restated Certificate of Incorporation.

#### **Stock Subscription Agreement**

The Equity Financing is governed by the Stock Subscription Agreement, a copy of which is attached hereto as Annex H. We urge you to read the Stock Subscription Agreement in its entirety. It is the legal document that governs the equity financing.

The Stock Subscription Agreement contains customary closing conditions, including the requirement that SurgiCare complete additional financing, in connection with which the debt liabilities of each of IPS, DCPS, MBS and SurgiCare will be restructured, refinanced or assumed and the requirement that the closing conditions to the IPS and DCPS/MBS Merger Agreements be satisfied.

Pursuant to the Stock Subscription Agreement, upon termination of the IPS Merger Agreement in specified circumstances, SurgiCare is required by the Stock Subscription Agreement to reimburse Brantley IV for its reasonable out-of-pocket expenses and/or to pay Brantley IV a non-refundable fee of \$3 million.

The Stock Subscription Agreement also contains representations, warranties and covenants.

The Stock Subscription Agreement also imposes certain indemnification obligations on SurgiCare and Brantley IV.

#### **Registration Rights Agreement**

Brantley IV will also receive the right to register the shares of Class A Common Stock issuable to it upon conversion of the Class B Common Stock pursuant to a registration rights agreement to be executed between Orion and Brantley IV. Pursuant to the agreement, Brantley IV will receive demand registration rights and incidental registration rights for the shares of Class A Common Stock issuable upon conversion of Brantley IV's Class B Common Stock. Such rights allow Brantley IV, or the then holder of such shares, subject to certain conditions, to require that Orion file a registration statement to register such shares or require that such shares be added to a registration statement on which Orion is registering its shares.

The registration rights agreement also makes the holders of shares of Class A Common Stock received pursuant to the IPS Merger Agreement, debt exchange agreement, and DCPS/MBS Merger Agreement (including upon conversion of the Class C Common Stock) third-party beneficiaries. Until the first anniversary of the date of the registration rights agreement, such third-party beneficiaries have the right pursuant to the registration rights agreement to cause Orion to add their shares of Class A Common Stock, including shares of Class A Common Stock issuable upon conversion of shares of Class C Common Stock, to a registration statement on which Brantley IV's shares are being registered.

The form of registration rights agreement is attached hereto as Annex G.

#### **Certain Material U.S. Federal Income Tax Consequences of the Equity Financing**

The following discussion briefly summarizes certain material U.S. federal income tax considerations relating to the Equity Financing, that may be relevant to holders of SurgiCare common stock. The discussion is based upon the currently existing provisions of the Code, existing and proposed Treasury Regulations promulgated thereunder, IRS rulings and pronouncements, and judicial decisions, all in effect as of the date hereof and all of which are subject to change (possibly retroactively) at any time. This

summary does not address all tax considerations that may be relevant. In particular, it does not address any tax considerations under state, local or foreign laws, or any tax considerations that may be relevant to certain stockholders in light of their particular circumstances. Also, it does not address the tax consequences to holders that are subject to special tax rules, such as banks, insurance companies, regulated investment companies, personal holding companies, foreign entities, nonresident alien individuals, broker-dealers and tax-exempt entities. This summary also does not address any tax considerations that may be relevant to IPS stockholders, MBS stockholders, DCPS stockholders, Brantley IV or any of its affiliated entities, any stockholder who acquired SurgiCare common stock upon the exercise of an option or otherwise as compensation, or any optionholders, debtholders or warrant holders of any company. Finally, this summary does not address any tax consequences of the Equity Financing or of any related transactions other than as specifically set forth below.

*Issuance of SurgiCare Stock for Cash.* Neither SurgiCare nor the holders of SurgiCare common stock will recognize any taxable gain or loss as a result of the issuance of SurgiCare common stock in exchange for cash in the Equity Financing.

*Issuance of SurgiCare Stock for Debt.* If it is determined that the Class B Common Stock that is exchanged for the bridge loans made by Brantley IV's subsidiary to SurgiCare or to IPS in the Equity Financing pursuant to the Stock Subscription Agreement has a fair market value less than the amount of the bridge loans for which it is exchanged, the company that issued the debt (IPS or SurgiCare, as applicable) will recognize taxable cancellation of indebtedness income. The amount of such income will generally be equal to the difference between the amount of the bridge loans and the fair market value of the SurgiCare common stock exchanged therefore.

#### **Regulatory Matters**

We are not aware of any governmental approvals or actions that are required to complete the Equity Financing, apart from standard regulatory notifications and approvals in connection with transfer of health care businesses. We plan to provide appropriate regulatory notification, seek any required governmental approval, and take any other necessary action. No waiting periods or filing requirements imposed by U.S. federal antitrust laws are applicable to the Equity Financing.

SurgiCare will file two additional listing applications with the American Stock Exchange. One additional listing application will cover the Reverse Stock Split and reclassification of SurgiCare's common stock as Class A Common Stock. The second additional listing application will cover the shares of Class A Common Stock issuable upon conversion of the Class B Common Stock issued in the Equity Financing and the Class A Common Stock issuable pursuant to the other transactions described in this proxy statement. The Transaction Documents require that the shares of Class A Common Stock issuable thereunder be authorized for listing on the American Stock Exchange, subject to official notice of issuance, as a condition to closing.



**UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS**

The following unaudited pro forma combined financial statements are presented to illustrate the effect on the historical financial position and operating results as a result of the IPS Merger, with IPS being treated as the acquirer for accounting purposes, and the DCPS/MBS Merger. The following twelve-month unaudited pro forma condensed combined statements of operations are presented using SurgiCare's, IPS's, DCPS's results for the year ended December 31, 2002 and MBS's results for the year ended September 30, 2002. The interim period unaudited pro forma condensed combined statements of operations are presented using SurgiCare's, IPS's, DCPS's and MBS's results for the nine months period ended September 30, 2003.

SurgiCare will account for the IPS Merger as a reverse merger in accordance with generally accepted accounting principles, with IPS being designated as the accounting acquirer. The DCPS/MBS Merger will be accounted for as a purchase in accordance with generally accepted accounting principles. The pro forma adjustments were applied to the respective historical financial statements to reflect and account for each merger using the purchase method of accounting. Accordingly, the total purchase costs will be allocated to the tangible and intangible assets acquired and liabilities assumed of SurgiCare, DCPS and MBS based on their respective fair values. The unaudited pro forma condensed combined balance sheet is presented as if the Mergers and other transactions contemplated thereby had occurred on September 30, 2003. The unaudited pro forma condensed combined statements of operations assume that the Mergers and the other transactions contemplated thereby had occurred on January 1, 2002. The pro forma adjustments are based on the information and assumptions available and considered reasonable at the time of the printing of this proxy statement.

A final determination of the required purchase accounting adjustments will be made after completion of the mergers. The actual financial position and results of operations will differ, perhaps significantly, from the pro forma amounts reflected herein because of a variety of factors, including additional information, changes in value that are not currently identified and operating results between the dates of the pro forma information and the date on which the acquisitions actually take place.

Because the pro forma financial information is based upon the financial condition and operating results of SurgiCare, IPS, MBS and DCPS during periods when the businesses were under separate management and control, the information presented may not be indicative of the results that would have actually occurred had the Mergers been consummated as of the respective periods presented, nor is it indicative of future financial or operating results. SurgiCare may also expect to incur integration related expenses as a result of the Mergers. The unaudited pro forma financial information and related notes should be read along with:

- (i) the annual report on Form 10-KSB of SurgiCare for the fiscal year ended December 31, 2002 included in Annex C to this proxy statement;
- (ii) the management's discussion and analysis of financial condition and results of operations, historical financial statements, and the related notes of IPS, included in Annex I to this proxy statement;
- (iii) the management's discussion and analysis of financial condition and results of operations, historical financial statements, and the related notes of DCPS, included in Annex J to this proxy statement; and
- (iv) the management's discussion and analysis of financial condition and results of operations, historical financial statements, and the related notes of MBS, included in Annex K to this proxy statement.

## UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET

As of September 30, 2003

	(A) SurgiCare, Inc. as reported 30-Sep-03	(B) Integrated Physician Solutions, Inc. as reported 30-Sep-03	(C) Medical Billing Services, Inc. as reported 30-Sep-03	(D) Dennis Cain Physicians Solutions, Ltd. as reported 30-Sep-03	(E) SurgiCare/ IPS Pro Forma Adjustments	(F) DCPS/ MBS Pro Forma Adjustments	(G) (A)+(B)+(C) +(D)+(E)+(F) Pro Forma Combined
<b>Current Assets</b>							
Cash and cash equivalents	\$ 113,027	\$ 7,392	\$ 60,915	\$ 325,909	6,000,000 (f)	(3,750,000)(g)	\$ 2,757,243
Accounts receivable	812,247	2,008,147	770,760	311,938			3,903,092
Inventory	361,483	148,517					510,000
Prepaid expenses and other current assets	254,308	381,183	26,531				662,022
Total current assets	1,541,065	2,545,239	858,206	637,847	6,000,000	(3,750,000)	7,832,357
<b>Property, Plant &amp; Equipment</b>	2,453,287	398,673	98,551	40,597			2,991,108
<b>Other Long Term Assets</b>							
Intangibles, including goodwill	8,159,133	11,420,350	0	0	6,625,414 (b)	10,590,972 (g)	36,795,869
Real estate	4,000,000				(2,000,000)(b)		2,000,000
Guaranteed receivable on real estate					2,000,000 (b)		2,000,000
Other assets	782,082	83,423	32,445	1,997			899,947
Total other long term assets	12,941,215	11,503,773	32,445	1,997	6,625,414	10,590,972	41,695,816
Total assets	\$ 16,935,567	\$ 14,447,685	\$ 989,202	\$ 680,441	\$ 12,625,414	\$ 6,840,972	\$ 52,519,281
<b>Current Liabilities</b>							
Accounts payable and accrued expenses	4,032,962	2,833,346	232,486	192,034		(84,850)(g)	7,205,978
Income taxes payable			203,168				203,168
Current portion of long-term-debt and capital lease obligation	8,093,918	7,218,917	14,460		(4,533,061)(a)		10,794,234
Total current liabilities	12,126,880	10,052,263	450,114	192,034	(4,533,001)	(84,850)	18,203,380
<b>Long Term Liabilities</b>							
Long term debt and capital lease obligations	116,693	2,377,272	35,127	0		500,000 (g)	3,029,092
Total long term liabilities	116,693	2,377,272	35,127	0	0 (1,225)(e)	500,000	3,029,092
Redeemable Convertible Preferred Stock	2,125	12,126,213			(12,126,213)(c)		900
<b>Stockholders Equity</b>							
Common stock, Class A, B and C	124,416	2,854	1,000		8,553 (a)	12,879 (g)	18,100
Capital				(289,881)		289,881 (g)	0
					(4,998,425)(b)		
					4,524,508 (a)		
					11,504,067 (c)		
					127,748 (d)		
					1,225 (e)		

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Additional paid-in-capital	16,189,292	9,392,473	114,000		6,000,000 (f)	7,291,311 (g)	50,146,199
Retained earnings (accumulated deficit)	(11,577,271)	(18,878,390)	418,961	778,288	11,577,271 (b)	(1,197,249)(g)	(18,878,390)
Treasury stock	(38,318)	(625,000)	(30,000)		38,318 (b)		0
Shareholders receivable	(8,250)				625,000 (c)	30,000 (g)	0
					8,250 (b)		0
Total stockholders equity	4,689,869	(10,108,063)	503,961	488,407	29,285,913	6,425,822	31,285,909
Total liabilities and stockholders equity	\$ 16,935,567	\$ 14,447,685	\$ 989,202	\$ 680,441	\$ 12,625,414	\$ 6,840,972	\$ 52,519,281

See Accompanying Introduction and Notes to Unaudited Pro Forma Condensed Combined Balance Sheet

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET

As of September 30, 2003

(a) Conversion of Brantley III and Brantley Capital Corporation Debt to SurgiCare, Inc. Stock

Represents the conversion of outstanding IPS and SurgiCare notes (and related interest) payable to Brantley affiliates into an estimate of 8,552,946 shares of SurgiCare, Inc. common Class A and Class B stock as follows:

Brantley Venture Partners III, LLP (IPS)	\$1,673,510
Brantley Capital Corporation (IPS)	2,184,551
Lakepoint Acquisition (IPS and SurgiCare)	675,000
	<hr/>
Total Liabilities Converted	\$4,533,061
	<hr/>

The actual number of shares issuable to the Brantley affiliates and Lakepoint Acquisition (an affiliate of Brantley IV) in exchange for the IPS and SurgiCare notes will be determined based on the daily average of the high and low price per share of SurgiCare common stock over the five trading days immediately prior to closing.

(b) To record the tentative allocation of the purchase price and the elimination of historical equity balances of SurgiCare.

		<b>Purchase Price</b>
		<hr/>
Market Capitalization of SurgiCare, Inc. at effective date of merger:		
Surgicare, Inc. outstanding Common Stock Series A	25,793,520	
Market Price per Share	\$ 0.40	\$10,317,408
Direct merger transaction costs		1,000,000
		<hr/>
Total Purchase Price		\$11,317,408
		<hr/>

Allocated as follows:

		<b>Fair Value</b>
		<hr/>
Cash		\$ 113,027
Accounts receivable-trade and other		812,247
Inventory		361,483
Other current assets		254,308
Property and equipment		2,453,287
Real Estate		2,000,000
Guaranteed receivable on real estate		2,000,000
Investments/Other		782,082
Goodwill and identifiable intangibles		14,784,547
Debt		(8,210,611)
Accounts payable-trade and accruals		(4,032,962)
	<hr/>	<hr/>
Net assets acquired		\$11,317,408



**NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET (Continued)**

(c) To reflect the conversion of IPS Preferred into IPS common then its exchange for SurgiCare common in accordance with the formula described in The IPS Merger Agreement Conversion of Securities.

**(d) To reflect the one for ten reverse stock split as required by the merger agreement and change the par value of the common stock from \$.005 to \$.001**

Certain in-the-money stock options held by SurgiCare employees and others will be modified to include cashless option features just prior to the close of the merger. The impact of such cashless exercise would be to increase compensation cost at the date of the transaction for the intrinsic value. No adjustment for the cashless option feature has been made in the accompanying pro-forma condensed combined financial statements.

**(e) Conversion of Preferred Stock Series A**

Represents the conversion of SurgiCare Preferred Stock Series A into SurgiCare Common Stock Class A

**(f) Additional equity investment by Brantley Venture Partners IV**

Represents the investment by Brantley Venture Partners IV of cash in exchange for SurgiCare Common Stock Class B, \$6,000,000 and contribution of bridge notes outstanding.

As described further in The Equity Financing section of the proxy, the actual cash payment to be received at closing will be reduced by the amount of bridge notes outstanding in excess of \$1,280,000.

**(g) To reflect the allocation of purchase consideration for the DCPS/MBS transaction and the elimination of those entities historical equity accounts**

Cash, at closing	\$ 3,500,000
Note Payable	500,000
Common Stock Class C (1,287,880 shares)	6,825,764
Liabilities Assumed	592,426
	<hr/>
Total Purchase Price	\$ 11,418,190
	<hr/>

The DCPS/MBS merger agreement includes contingent future payments if certain post-acquisition earnings targets are achieved. Such contingent consideration is not reflected here.

## NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET (Continued)

Allocated, as follows:

	Historical NBV		Adjustments	As Adjusted
	DCPS	MBS		
Cash	\$ 325,909	\$ 60,915 (1)	\$ (250,000)	\$ 136,824
Accounts receivable-trade and other	311,288	829,736		1,141,024
<b>Total Current Assets</b>	<b>637,197</b>	<b>890,651</b>	<b>(250,000)</b>	<b>1,277,848</b>
Property and equipment	40,597	98,551		139,148
Goodwill, and identifiable intangibles	0	0	10,590,972	10,590,972
Other assets	2,648	0		2,648
<b>Total Assets</b>	<b>680,442</b>	<b>989,202</b>	<b>10,340,972</b>	<b>12,010,616</b>
Accounts payable and accruals	(192,035)	(435,654)(2)	84,850	(542,839)
LT Debt and capital leases		(49,587)		(49,587)
<b>Net assets acquired</b>				<b>\$ 11,418,190</b>

(1) Represents the amount of cash contemplated to be distributed to sellers prior to closing

(2) Represents adjustments negotiated to historical accrued vacation due certain employees

The purchase price calculation assumes that the fair market value of SurgiCare common stock (based on the daily average of the high and low price per share over the five trading days immediately prior to the closing) is \$0.53 per share. If the fair market value of SurgiCare common stock is greater than \$0.70 per share (based on the daily average of the high and low price per share over the five trading days immediately prior to the closing) the total cash amount paid will be reduced by \$600,000 and the number of shares of SurgiCare common stock Class C issued will be increased by 193,939.

Additionally, if the fair market value of SurgiCare common stock (based on the daily average of the high and low price per share over the five trading days immediately prior to the closing) is less than \$0.70, SurgiCare will be required to pay MBS owners an additional cash amount on April 1, 2005. Based on the assumed price used in the unaudited pro forma condensed financial statements of \$0.53 per share, the cash payment is immaterial, and has not been included in the pro forma adjustments.

## UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENTS OF EARNINGS

For the nine-month period ended September 30, 2003

	(A)	(B)	(C)	(D)	(E)	(F)	(G)
	SurgiCare, Inc. as reported 30-Sep-03	Integrated Physician Solutions, Inc. as reported 30-Sep-03	Medical Billing Services, Inc. as reported 30-Sep-03	Dennis Cain Physicians Solutions, Ltd. as reported 30-Sep-03	SurgiCare/ IPS Pro Forma Adjustments	DCPS/ MBS Pro Forma Adjustments	(A)+(B)+(C) +(D)+(E)+(F) Pro forma combined
<b>Operating revenues</b>	\$ 5,890,428	\$ 18,266,371	\$ 4,617,290	\$ 3,062,027			\$ 31,836,116
<b>Cost of services</b>	3,377,139	11,463,396	0	0			14,840,535
<b>Gross margin</b>	2,513,289	6,802,975	4,617,290	3,062,027	0	0	16,995,581
<b>General and administrative expenses:</b>							
Salaries and benefits	1,190,560	3,052,861	3,721,439	1,880,323		(705,302)(c)	9,139,881
Facility rent and related costs	957,378	1,041,186	194,534	105,379			2,298,477
Depreciation and amortization	653,374	114,874	38,292	27,074			833,614
Professional and consulting fees	682,118	621,279	55,020	12,972			1,371,389
Insurance	133,201	405,778	17,366	7,537			563,882
Provision for doubtful accounts	311,648	1,494,643					1,806,291
Other	582,675	1,175,686	695,524	375,376			2,829,261
Total general and administrative	4,510,954	7,906,307	4,722,175	2,408,661	0	(705,302)	18,842,795
<b>Operating Income (loss)</b>	(1,997,665)	(1,103,332)	(104,885)	653,366	0	705,302	(1,847,214)
<b>Other income</b>							
Interest expense	(1,375,265)	(550,044)	(4,552)		207,317(b)	(30,000)(d)	(1,752,544)
Interest income			2,227	233			0
Gain (loss) on sale of partnership interest	319,086						2,460
Loss on sale of assets	(463,177)		512				319,086
Impairment on investment in land	(579,386)						(462,665)
Equity in (earnings) losses of limited partnerships	186,761						(579,386)
Other income	27,010						186,761
Total other expense, net	(1,884,971)	(550,044)	(1,813)	233	207,317	(30,000)	27,010
<b>Income(Loss) before income taxes</b>	(3,882,636)	(1,653,376)	(106,698)	653,599	207,317	675,302	(4,106,492)
<b>Income taxes</b>	13,561		36,366				49,927
<b>Net Income(Loss)</b>	\$ (3,869,075)	\$ (1,653,376)	\$ (70,332)	\$ 653,599	\$ 207,317	\$ 675,302	\$ (4,056,565)
<b>Preferred stock dividends</b>		(572,785)			572,785(a)		0
<b>Net Income(Loss) attributable to common stockholders</b>	\$ (3,869,075)	\$ (2,226,161)	\$ (70,332)	\$ 653,599	\$ 780,102	\$ 675,302	\$ (4,056,565)

See Accompanying Introduction and Notes to Unaudited Pro Forma Condensed Combined Statements of Earnings





## UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENTS OF EARNINGS

For the year ended December 31, 2002

	(A) SurgiCare, Inc. as reported 31-Dec-02	(B) Integrated Physician Solutions, Inc. as reported 31-Dec-02	(C) Medical Billing Services, Inc. as reported 31-Dec-02	(D) Dennis Cain Physicians Solutions, Ltd. as reported 31-Dec-02	(E) SurgiCare/ IPS Pro Forma Adjustments	(F) DCPS/ MBS Pro Forma Adjustments	(G) (A)+(B)+(C) +(D)+(E)+(F) Pro forma combined
<b>Operating revenues</b>	\$ 11,552,440	\$ 22,203,842	\$ 4,827,806	\$ 3,767,024			\$ 42,351,112
<b>Cost of services</b>	5,378,198	13,935,669	0	0			19,313,867
<b>Gross margin</b>	6,174,242	8,268,173	4,827,806	3,767,024	0	0	23,037,245
<b>General and administrative expenses:</b>							
Salaries and benefits	1,604,562	3,860,027	3,445,310	3,134,655		(1,061,341)(c)	10,983,213
Facility rent and related costs	893,906	1,320,839	224,833	107,213			2,546,791
Depreciation and amortization	745,731	207,667	55,321	67,718			1,076,437
Professional and consulting fees	2,223,374	912,795	64,355	8,337			3,208,861
Insurance	91,995	440,013	16,110	2,137			550,255
Provision for doubtful accounts	5,753,733	1,660,516	333				7,414,582
Other	994,772	1,226,255	891,633	470,060			3,582,720
Total general and administrative	12,308,073	9,628,112	4,697,895	3,790,120	0	(1,061,341)	29,362,859
<b>Operating Income (loss)</b>	(6,133,831)	(1,359,939)	129,911	(23,096)	0	1,061,341	(6,325,614)
<b>Other income</b>							
Interest expense	(1,359,060)	(599,392)	(651)	(1,727)	169,702(b)	(40,000)(d)	(1,831,128)
Interest income			4,515	2,457			6,972
Gain (loss) on terminated acquisition	(1,977,382)						(1,977,382)
Loss on sale of assets	(172,083)						(172,083)
Impairment on investment in land	(1,500,000)						(1,500,000)
Equity in (earnings) losses of limited partnerships	(103,874)						(103,874)
Other income	4,651						4,651
Total other expense, net	(5,107,748)	(599,392)	3,864	730	169,702	(40,000)	(5,572,844)
<b>Income(Loss) before minority interest and income taxes</b>	(11,241,579)	(1,959,331)	133,775	(22,366)	169,702	1,021,341	(11,898,458)
<b>Minority interest in loss of limited partnerships</b>	782,386						782,386
<b>Income(Loss) before income taxes</b>	(10,459,193)	(1,959,331)	133,775	(22,366)	169,702	1,021,341	(11,116,072)
<b>Income taxes</b>	1,609,576	0	(47,578)				1,561,998
<b>Net Income(Loss)</b>	\$ (8,849,617)	\$ (1,959,331)	\$ 86,197	\$ (22,366)	\$ 169,702	\$ 1,021,341	\$ (9,554,074)
<b>Preferred stock dividends</b>		(793,000)			793,000(a)		

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<b>Net Income(Loss) attributable to common stockholders</b>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	\$ (8,849,617)	\$ (2,752,331)	\$ 86,197	\$ (22,366)	\$962,702	\$ 1,021,341	\$ (9,554,074)
	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

See Accompanying Introduction and Notes to Unaudited Pro Forma Condensed Combined Statements of Earnings

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED

STATEMENTS OF EARNINGS

(a) To eliminate historical preferred stock dividends on Series A-2 redeemable preferred stock of 1,982,500 and 1,653,000 shares at 12/31/02 and 9/30/03, respectively

Year Ended 12/31/02	Period Ended 9/30/03
\$ 793,000	\$ 572,785
<u>          </u>	<u>          </u>

(b) To eliminate historical interest expense on indebtedness converted to SurgiCare common as part of the merger totalling \$3,582,345 at 12/31/02 and \$4,533,061 at 9/30/03

Year Ended 12/31/02	Period Ended 9/30/03
\$ 169,702	\$ 207,317
<u>          </u>	<u>          </u>

(c) To eliminate historical employee compensation in excess of contractual obligations as indicated in the merger agreements

Year Ended 12/31/02	Period Ended 9/30/03
\$ 1,061,341	\$ 705,302
<u>          </u>	<u>          </u>

(d) To record the interest expense on the note payable due to DCPS as part of the DCPS acquisition (\$500,000 at 8%)

Year Ended 12/31/02	Period Ended 9/30/03
\$ 40,000	\$ 30,000
<u>          </u>	<u>          </u>

## INFORMATION ABOUT SURGICARE

### Description of Business

SurgiCare, Inc. was incorporated in Delaware on February 24, 1984 as Technical Coatings Incorporated. On September 10, 1984 its name was changed to Technical Coatings, Inc. ( TCI ). Immediately prior to July 1999, TCI was an inactive company. On July 11, 1999, TCI changed its name to SurgiCare, Inc., and at that time changed its business strategy to developing, acquiring and operating freestanding ambulatory surgery centers ( ASC ). On July 21, 1999, SurgiCare acquired all of the issued and outstanding shares of common stock of Bellaire SurgiCare, Inc. a Texas corporation ( Bellaire ), in exchange for the issuance of 9.86 million shares of SurgiCare common stock and 1.35 million shares of SurgiCare Series A Redeemable Preferred Stock, par value \$.001 per share, to the holders of Bellaire s common stock. For accounting purposes, this reverse acquisition was effective July 1, 1999.

As of December 31, 2003, SurgiCare owned a majority interest in three surgery centers and a minority interest as general partner in one additional center. Three of SurgiCare s centers are located in Texas and one is located in Ohio. In limited circumstances, SurgiCare, or its subsidiaries, may also furnish anesthesia services in support of the activities of the surgery centers. With a view to SurgiCare consolidating the operations of some or all of these surgery centers, SurgiCare anticipates that it will need to adjust its ownership interest in such centers to establish an ownership interest of approximately 35% in each surgery center. We have begun the process of restructuring the ownership of the surgery center owned and operated by Bellaire to allow for the sale of investment interests to operating physicians in such surgery center.

Prior to the proposed amendments to its certificate of incorporation, SurgiCare is authorized to issue up to 50 million shares of common stock, par value \$0.005 per share, and 20 million shares of preferred stock, par value \$0.001 per share.

SurgiCare, Inc. s principal executive offices are located at 12727 Kimberly Lane, Suite 200, Houston, TX 77024, and its telephone number is 713-973-6675.

#### ***Bellaire SurgiCare, Inc.***

Bellaire owns and operates an ambulatory surgery center located in Houston, Texas. Bellaire has been in operation for 14 years, first as The Institute for Eye Surgery, and since March of 1995, as Bellaire SurgiCare, Inc. This center provides the venue for a wide range of high volume, lower-risk surgical procedures within a multi-specialty environment. Surgeons specializing in podiatry, orthopedics, pain management, and general surgery utilize this facility. The surgeons performing surgery at Bellaire generally charge their patients for the professional services they provide, while Bellaire only charges the patients for the facility fee. While Bellaire is currently a wholly-owned subsidiary of SurgiCare, we have begun the process of restructuring the ownership of the surgery center owned and operated by Bellaire to allow for the sale of investment interests to operating physicians in such surgery center.

#### ***SurgiCare Memorial Village, L.P.***

SurgiCare, through its wholly-owned subsidiary Town & Country SurgiCare, Inc., owns a 60% general partnership interest in SurgiCare Memorial Village, L.P. ( Memorial Village ). This center provides the venue for a wide range of high volume, lower-risk surgical procedures within a multi-specialty environment. Surgeons specializing in podiatry, orthopedics, pain management, gynecology and reconstructive, and general surgery utilize this facility. The surgeons performing surgery at Memorial Village generally charge their patients for the professional services they provide, while Memorial Village only charges the patients for the facility fee.

***San Jacinto Surgery Center, L.P.***

SurgiCare, through its wholly-owned subsidiary Baytown SurgiCare, Inc., owns a 10% general partnership interest in San Jacinto Surgery Center, L.P. ( San Jacinto ). This center provides the venue for a wide range of high volume, lower-risk surgical procedures within a multi-specialty environment. Surgeons specializing in podiatry, orthopedics, pain management, gynecology and plastics, as well as general, surgery utilize this facility. The surgeons performing surgery at San Jacinto generally charge their patients for the professional services they provide, while San Jacinto only charges the patients for the facility fee.

***Tuscarawas Ambulatory Surgery Center, LLC***

SurgiCare owns a 51% interest in Tuscarawas Ambulatory Surgery Center, LLC ( Tuscarawas ) located in Dover, Ohio. This center provides the venue for a wide range of high volume, lower-risk surgical procedures within a multi-specialty environment. Surgeons specializing in orthopedics, ear, nose and throat and surgery utilize this facility. The surgeons performing surgery at the center generally charge their patients for the professional services they provide, while Tuscarawas only charges the patients for the facility fee.

**Industry Overview**

Freestanding ambulatory surgery centers are licensed outpatient surgery centers, generally equipped and staffed for a wide variety of surgical procedures. These procedures are generally lower-risk and considered appropriate for the freestanding ambulatory setting. In recent years, government programs, private insurance companies, managed care organizations and self-insured employers have implemented various cost-containment measures to limit the growth of healthcare expenditures. These cost-containment measures, together with technological advances, have resulted in a significant shift in the delivery of healthcare services away from traditional inpatient hospitals to more cost-effective alternative sites, including ambulatory surgery centers.

SurgiCare believes that the following factors have contributed to the growth of ambulatory surgery centers:

*Cost-effective Alternative.* Ambulatory surgical centers do not usually have the high cost and overhead of the ancillary services such as administration, laboratory, radiology, or dietary, that are generally found in hospital settings. Therefore, surgery is generally less expensive than hospital inpatient surgery. In addition, SurgiCare believes that surgery performed at a freestanding ambulatory surgery center is also less expensive than hospital-based ambulatory surgery for a number of reasons, including:

Lower facility development costs;

More efficient staffing and space utilization; and

Specialized operating environment focused on cost containment.

SurgiCare believes that interest in ambulatory surgery centers has grown as managed care organizations have continued to seek a cost-effective alternative to inpatient services.

*Physician and Patient Preference.* Operating physicians, who have determined that their patients are in need of a surgical procedure, generally choose in which facility the surgery will be performed. In most cases, patients will have their surgery performed at the facility that their doctor determines is most appropriate.

Freestanding ambulatory surgery centers subject neither doctors nor their patients to the large institutional environment found at both acute care inpatient hospitals, and outpatient surgery centers located within a hospital.

SurgiCare believes that because of the ease of admission and discharge, many physicians prefer ambulatory surgery centers. SurgiCare believes that such centers enhance physicians' productivity by

providing them with greater scheduling flexibility, more consistent nurse staffing and faster turnaround time between cases. This allows the physician to perform more surgeries in a defined period.

In contrast, hospitals generally serve a broader group of physicians, including those involved with emergency procedures, resulting in postponed or delayed surgeries. Additionally, many physicians choose to perform surgery in a freestanding ambulatory surgery center because their patients prefer the simplified admissions and discharge procedures and the less institutional atmosphere.

*New Technology.* The increased use of minimally invasive surgery, enhanced endoscopic techniques and fiber optics, have reduced the trauma and recovery time associated with many surgical procedures. Improved anesthesia has shortened recovery time by minimizing postoperative side effects such as nausea and drowsiness, thereby avoiding, in some cases, overnight hospitalization. These new technologies and advances in anesthesia, which have been increasingly accepted by physicians, have significantly expanded the types of surgical procedures that are being performed in ambulatory surgery centers.

### **Business Philosophy**

SurgiCare believes that physician owned and operated surgical centers are typically profitable. This profitability results primarily from the fact that physicians who own and operate an ambulatory surgical center are the center's most significant source of patients and benefactors. Generally, it is the operating physician, not the patient, who chooses the facilities where surgical procedures are to be done. Because this decision is made at the physician level, it is in fact the physicians bringing patients to the outpatient surgical facility.

SurgiCare believes that ambulatory surgical centers receive their patient referrals almost exclusively from the operating physicians. Therefore, it becomes an extremely important role of a center's management to insure that the operating physicians have everything they need, and that they are pleased with the results that they are able to obtain at the center. If management and the operating physicians are substantially the same, it becomes much easier to insure that physician needs are met, and that their experiences at the centers are pleasant.

Furthermore, SurgiCare believes that physicians become cost conscious when they own and manage the ambulatory surgical centers in which they practice. This increased cost consciousness can have a significant positive effect on the overall profitability of the center without detrimentally affecting the patients.

SurgiCare believes that the profitability of freestanding ambulatory surgery centers tends to make them attractive to acquirers. Nevertheless, following the acquisition of a physician owned center, evidence suggests that the typical center's profitability will significantly decrease. SurgiCare believes that this typical decline in profitability can be explained, in part, because in many of such acquisitions, the operating physicians lose control of the center. After a typical acquisition of an ambulatory surgery center, the control of the center is typically vested in non-physician management. The factors motivating the physician users to insure the center's profitability are therefore typically removed.

SurgiCare's management structure consists of physicians and healthcare professionals. SurgiCare's management has substantial experience in the operations and management of ambulatory surgical centers. SurgiCare also expects that it will issue its own shares, or other equity interests, to the physicians who own and operate other centers in which SurgiCare may acquire an interest. SurgiCare believes that it will thereby be able to substantially align the interests of SurgiCare's management and stockholders with those of the physician owners of centers in which SurgiCare may acquire an interest. SurgiCare also presently intends to permit each surgery center to be substantially managed by its own board, which is anticipated to consist of a majority of physicians associated with the center and one or more representatives of SurgiCare. Based upon this approach, SurgiCare expects that it will benefit from the substantial unity of goals and motivations of its own management and stockholders with those of physicians who have previously owned and operated a freestanding center acquired, in whole or in part, by SurgiCare.

SurgiCare believes that if the goals and motivations for each center are substantially aligned, then SurgiCare can achieve profitability for every center in which it acquires an interest. However, there are numerous factors that affect the profitability of ambulatory surgery centers, including regulatory and liability matters. Therefore, there can be no assurance that the profitability of any center, or of SurgiCare as a whole, will be achieved or maintained.

SurgiCare intends to apply its philosophy in the acquisition, development and operation of physician owned/managed freestanding ambulatory surgery centers.

## Strategy

SurgiCare's market strategy is to accelerate penetration of key markets and expand into new markets by:

*Attracting and retaining top quality, highly productive surgeons and other physicians.* Recognizing the importance of physician satisfaction, SurgiCare operates its facilities and has designed its operating model to encourage physicians to choose our facilities. SurgiCare has identified and seeks to accommodate the key factors in a physician's decision making process, which SurgiCare believes includes quality of care, patient comfort, streamlined administrative processes, efficient operation and overall opportunity for increased physician productivity.

*Enhance physician productivity.* SurgiCare intends to enhance physician productivity and promote increased same-center volumes, revenues and profitability by increasing physician involvement, and creating operating efficiencies, including improved scheduling, group purchasing programs and clinical efficiencies.

*Growth through selective domestic acquisitions and development of surgical facilities.* SurgiCare typically targets the acquisition or development of surgery centers that provide high volume, non-emergency, lower risk procedures in several medical specialties. Our focus is on under-performing centers where acquisition prices are modest and the leverage returns for operational performance improvements is high. SurgiCare's development staff first identifies existing centers that are potential acquisition candidates. The candidates are then evaluated against SurgiCare's project criteria which may be expected to include several factors such as number of procedures currently being performed by the practice, competition from and the fees being charged by other surgical providers, relative competitive market position of the surgery centers under consideration, ability to contract with payors in the market and state certificate of need (CON) requirements for development of a new center. SurgiCare is in the process of identifying ambulatory surgical centers as potential acquisition targets and has, in some cases, conducted preliminary discussions with representatives of centers. SurgiCare expects that the acquisition of other surgery centers will take the form of mergers, stock-for-stock exchanges or stock-for-assets exchanges and that in most instances, the target company will wish to structure the business combination to be within the definition of a tax-free reorganization under Section 368 of the Internal Revenue Code of 1986, as amended. SurgiCare may, however, use other acquisition structuring techniques including purchases of assets or stock for cash or cash and stock, or through formation of one or more limited partnerships or limited liability companies. SurgiCare will typically acquire a minority interest in a particular center.

*Enhance operating efficiencies.* We use systems and protocols to enhance operating efficiencies at both existing and newly acquired or developed facilities. We believe that this focus on efficient operations increases our own profitability and encourages physicians to use our facilities by increasing their productivity. In addition, efficient operations are critical to our lower cost model and our competitive advantage in attracting and negotiating with payors.

*Creation of operationally efficient clusters of ASCs.* We seek to build a core management team in each geographical market which will gain increased marketing and operational efficiencies as we add new centers to the market. Spreading the overhead burdens across more operating units not



only reduces the total overhead per center but also allows us to attract increasingly more competent operating managers.

*Diversification into complimentary healthcare businesses.* SurgiCare expects to diversify into related healthcare markets and is targeting imaging centers and practice management companies. SurgiCare is looking to develop and/or acquire imaging centers to operate in conjunction with our surgery centers. This will strategically position us to service medical outpatient needs and enhance the practices of the healthcare providers who utilize our services. SurgiCare is planning to expand into practice management, which is a core discipline that SurgiCare will need to continue to grow and be profitable. The Acquisitions are consistent with this strategy. Servicing surgery centers with practice management functions may also be a source of potential acquisitions.

#### **Acquisition and Development of Surgery Centers**

SurgiCare's development staff works to identify existing centers that are potential acquisition candidates and identify physician practices that are potential partners for new center development in the medical specialties that SurgiCare has targeted for development.

The candidates are then evaluated against SurgiCare's project criteria which may be expected to include several factors such as number of procedures currently being performed by the practice, competition from and the fees being charged by other surgical providers, relative competitive market position of the physician practice under consideration, ability to contract with payors in the market and state CON requirements for development of a new center.

In presenting the advantages to physicians of developing a new freestanding ambulatory surgery center in partnership with SurgiCare, SurgiCare anticipates that the SurgiCare's development staff will emphasize the following factors, among others:

1. SurgiCare's model of minority interest, allowing the physicians or limited partners to own a majority of the center.
2. Simplified administrative procedures.
3. The ability to schedule consecutive cases without preemption by inpatient or emergency procedures.
4. Rapid turnaround time between cases.

5. The high technical competency of the center's clinical staff that performs only a limited number of specialized procedures, and state-of-the-art surgical equipment.

SurgiCare expects that it will provide the following developmental services: financial feasibility pro forma analysis; assistance in state CON approval process; site selection; assistance in space analysis and schematic floor plan design; analysis of local, state, and federal building codes; negotiation of equipment financing with lenders; equipment budgeting, specification, bidding, and purchasing; construction financing; architectural oversight; contractor bidding; construction management; assistance with licensing; assistance with Medicare certification; and assistance with third party managed care contracts.

Going forward, SurgiCare anticipates that its ownership interests in most of its freestanding ambulatory surgery centers will be approximately 35%. However, from time to time SurgiCare may identify centers where it is advantageous to acquire a majority interest. Regardless of the percentage of each center that SurgiCare acquires, the physicians who had owned and operated a center acquired by SurgiCare, or who have newly developed a center in partnership with SurgiCare, generally will become stockholders in SurgiCare. The local physicians will continue to oversee their operations through an executive committee that interacts with SurgiCare on a regular basis to provide feedback and set policy.

**Surgery Center Locations**

The following table sets forth information related to SurgiCare's surgical centers in operation as of December 31, 2003.

<b>Name</b>	<b>Location</b>	<b>Acquisition Date</b>	<b>SurgiCare Ownership</b>
Bellaire SurgiCare	Houston, Texas	July 1999	100%
SurgiCare Memorial Village	Houston, Texas	Oct. 2000	60%
San Jacinto Surgery Center	Baytown, Texas	Oct. 2000	10%
Tuscarawas Ambulatory Surgery Center	Dover, Ohio	June 2002	51%

**AAAHC Accreditation**

Three of SurgiCare's surgery centers are accredited by the Accreditation Association for Ambulatory Health Care Inc. ( AAAHC ). Although not required, SurgiCare believes that obtaining an AAAHC accreditation is useful in competing for, and contracting with, certain managed care organizations. SurgiCare, where practical, will strive to obtain AAAHC accreditation.

**Revenues**

SurgiCare's principal source of revenues is a surgical facility fee charged to patients for surgical procedures performed in its surgery centers. SurgiCare depends upon third-party programs, including governmental and private health insurance programs to pay these fees on behalf of their patients. Patients are responsible for the co-payments and deductibles when applicable. The fees vary depending on the procedure, but usually include all charges for operating room usage, special equipment usage, supplies, recovery room usage, nursing staff and medications. Facility fees do not include the charges of the patient's surgeon, anesthesiologist or other attending physicians, which are billed directly to third-party payors by such physicians. In addition to the facility fee revenues, SurgiCare also earns management fees from its operating facilities and development fees from centers that it develops.

Freestanding ambulatory surgery centers, such as those which SurgiCare owns, or intends to acquire, an interest, depend upon third-party reimbursement programs, including governmental and private insurance programs, to pay for services rendered to patients. SurgiCare derived approximately 15% of its gross revenues from governmental healthcare programs, including Medicare and Medicaid, in 2002. The Medicare program currently pays ambulatory surgery centers and physicians in accordance with fee schedules, which are prospectively determined.

The Department of Health and Human Services ( DHHS ) bases its reimbursement system to ambulatory surgery centers on cost surveys. The current payment system is based on a 1986 cost survey. Another survey was completed in 1994, and based on this survey, in 1998, DHHS proposed a new payment methodology for surgery centers. If implemented, this new payment methodology would have adversely affected our revenues by approximately 2%. In May 2002, DHHS listed this proposal as a discontinued action. However, DHHS may propose a new rule at any time that could adversely impact surgery center reimbursement and therefore our financial condition, results of operations and business prospects.

In January 2003, the Medicare Payment Advisory Commission ( MedPac ) voted to recommend to Congress that the reimbursement by Medicare for procedures performed in surgery centers be no higher than the reimbursement rate for the same procedures performed in hospital outpatient departments. Also, in January 2003, the Office of Inspector General ( OIG ) issued a report that included a similar recommendation, and a recommendation that DHHS conduct a new cost survey. It is uncertain if Congress will act on either or both recommendations. While the majority of procedures are reimbursed at a higher rate in hospital outpatient departments than in ambulatory surgery centers, several procedures are reimbursed at a higher rate in ambulatory surgery centers. Although there is no certainty that these

recommendations will be implemented, we have determined that, based on our current procedure mix, the MedPac recommendation, if implemented, would have an immaterial effect on revenues.

In addition to payment from governmental programs, ambulatory surgery centers derive a significant portion of their net revenues from private healthcare reimbursement plans. These plans include both standard indemnity insurance programs as well as managed care structures such as preferred provider organizations ( PPOs ), health management organizations ( HMOs ) and other similar structures.

The strengthening of managed care systems nationally has resulted in substantial competition among providers of services, including providers of surgery center services. This competition includes companies with greater financial resources and market penetration than SurgiCare. In some cases national managed care systems require that a provider, in order to participate in a specific plan, be able to cover an expanded geographical area.

SurgiCare believes that all payors, both governmental and private, will continue their efforts over the next several years to reduce healthcare costs and that their efforts will generally result in a less stable market for healthcare services. While no assurances can be given concerning the ultimate success of SurgiCare's efforts to contract with healthcare payors, SurgiCare believes that its position as a low-cost alternative for certain surgical procedures should enable its current centers, and additional centers which it may acquire, to compete effectively in the evolving healthcare marketplace.

### **Competition**

There are several companies, many in niche markets, that acquire existing freestanding ambulatory surgery centers. Many of these competitors have greater resources than SurgiCare. The principal competitive factors that affect the ability of SurgiCare and its competitors to acquire surgery centers are price, experience, reputation, and access to capital.

### **Managed Care Contracts**

SurgiCare's participation in managed care contracts, often referred to as HMOs and PPOs, in most cases simply makes it more convenient and cost-effective for a potential patient to allow their doctor to choose a SurgiCare facility. Participation in most managed care contracts is helpful, but not material to SurgiCare's business. SurgiCare believes that its current centers can provide lower-cost, high quality surgery in a more comfortable environment for the patient in comparison to hospitals and to hospital-based surgery centers with which SurgiCare competes for managed care contracts. SurgiCare intends that any additional center which it may acquire will be similarly situated. In competing for managed care contracts, it is important that SurgiCare be able to show insurance companies that it provides quality healthcare at affordable, competitive prices.

### **Government Regulation**

The healthcare industry is subject to extensive regulation by a number of governmental entities at the federal, state and local levels. Regulatory activities affect the business activities of SurgiCare by controlling its growth, requiring licensure and certification for its facilities, regulating the use of SurgiCare's properties, and controlling reimbursement to SurgiCare facilities for the services provided at those facilities.

*Certificates of Need and State Licensing.* CON regulations control the development of ambulatory surgery centers in certain states. CONs generally provide that prior to the expansion of existing centers, the construction of new centers, the acquisition of major items of equipment or the introduction of certain new services, approval must be obtained from the designated state health-planning agency. State CON statutes generally provide that, prior to the construction of new facilities or the introduction of new services, a designated state health-planning agency must determine that a need exists for those facilities or services. SurgiCare expects that its development of ambulatory surgery centers will generally focus on states that do not require CONs. However, acquisitions of existing surgery centers, even in states that require CONs for new centers, generally do not require CON regulatory approval.

State licensing of ambulatory surgery centers is generally a prerequisite to the operation of each center and to participation in federally funded programs, such as Medicare and Medicaid. Once a center becomes licensed and operational, it must continue to comply with federal, state and local licensing and certification requirements in addition to local building and life safety codes. In addition, each center is also subject to federal, state and local laws dealing with issues such as occupational safety, employment, medical leave, insurance regulations, civil rights and discrimination, and medical waste and other environmental issues.

*Insurance Laws.* Laws in all states regulate the business of insurance and the operation of HMOs. Many states also regulate the establishment and operation of networks of healthcare providers. SurgiCare believes that its operations are in compliance with these laws in the states in which it currently does business. The National Association of Insurance Commissioners (the NAIC) recently endorsed a policy proposing the state regulation of risk assumption by healthcare providers. The policy proposes prohibiting providers from entering into capitated payment contracts (which are contracts that compensate the provider based on the number of members in the plan rather than based on the services the provider performs) or other risk sharing contracts, except through HMOs or insurance companies. Several states have adopted regulations implementing the NAIC policy in some form. In states where such regulations have been adopted, healthcare providers will be precluded from entering into capitated contracts directly with employers and benefit plans other than HMOs and insurance companies.

SurgiCare and its affiliated groups currently do not and currently do not intend to enter into contracts with managed care organizations, such as HMOs, whereby SurgiCare and its affiliated groups would assume risk in connection with providing healthcare services under capitated payment arrangements, although certain of the subsidiaries of SurgiCare that will exist after the Transactions currently do so, and may continue to do so in the future. If SurgiCare or its affiliated entities are considered to be in the business of insurance as a result of entering into such arrangements, they could become subject to a variety of regulatory and licensing requirements applicable to insurance companies or HMOs, which could have a material adverse effect upon SurgiCare's ability to enter into such contracts.

With respect to managed care contracts that do not involve capitated payments or some other form of financial risk sharing, federal and state antitrust laws restrict the ability of healthcare provider networks such as SurgiCare's specialty physician networks to negotiate payments on a collective basis.

*Reimbursement.* SurgiCare depends upon third-party programs, including governmental and private health insurance programs; to reimburse its ambulatory service centers for services rendered to patients in those centers. In order to receive Medicare reimbursement, each ambulatory surgery center must meet the applicable conditions of participation set forth by DHHS relating to the type of facility, its equipment, personnel and standard of medical care, as well as compliance with state and local laws and regulations, all of which are subject to change from time to time. Ambulatory surgery centers undergo periodic on-site Medicare certification surveys. SurgiCare's existing centers are certified as Medicare providers. SurgiCare believes that its current centers will participate in Medicare and other government programs. However, SurgiCare's current centers may or may not continue to qualify for participation in Medicare and other government programs. Additionally, the centers that SurgiCare acquires in the future may not qualify for participation in Medicare or other government programs.

*Medicare-Medicaid Illegal Remuneration Provisions.* The anti-kickback statute makes unlawful knowingly and willfully soliciting, receiving, offering or paying any remuneration (including any kickback, bribe, or rebate) directly or indirectly to induce or in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Medicare or Medicaid. Violation is a felony punishable by a fine of up to \$25,000 or imprisonment for up to five years, or both. The Medicare and Medicaid Patient Program Protection Act of 1987 (the 1987 Act) provides administrative penalties for healthcare practices which encourage over-utilization or illegal remuneration when the costs of services are reimbursed under the Medicare program. Loss of Medicare certification and severe financial penalties are included among the 1987 Act's sanctions. The 1987 Act, which adds to the criminal penalties under preexisting law, also directs the Inspector

General of the DHHS to investigate practices which may constitute over-utilization, including investments by healthcare providers in medical diagnostic facilities and to promulgate regulations establishing exemptions or safe harbors for investments by medical service providers in legitimate business ventures that will be deemed not to violate the law even though those providers may also refer patients to such a venture. Regulations identifying safe harbors were published in final form in July 1991 (the Regulations).

If an operating physician has a financial interest in a facility through a partnership interest, or as a shareholder, the operating physician has the potential to benefit from the profitability of the facility. Where a physician is in a position to direct referrals or business to an entity or facility in which such physician has an ownership interest, and, therefore will benefit from the financial profitability of such entity or facility, there is risk under federal and state law, including the Medicare-Medicaid Illegal Remuneration Provisions. If the facility where a surgeon performs surgery is considered an extension of the surgeon's practice, this reduces the risk of a violation of the anti-kickback statutes of the Medicare-Medicaid Illegal Remuneration Provisions.

The Regulations set forth two specific exemptions or safe harbors related to investment interests: the first concerning investment interests in large publicly traded companies (\$50 million in net tangible assets) and the second for investments in smaller entities. The corporate structure of SurgiCare and its centers meet all of the criteria of either existing investment interests safe harbor as announced in the Regulations.

While several federal court decisions have aggressively applied the restrictions of the anti-kickback statute, they provide little guidance as to the application of the anti-kickback statute to SurgiCare or its subsidiaries. There is safe harbor protection under the anti-kickback statute for physician-owned ambulatory surgical centers that are structured to meet certain tests set out in the regulations. SurgiCare's surgery centers may not currently satisfy all components of the tests for the ambulatory surgical center safe harbor applicable to the surgery centers. Nonetheless, SurgiCare believes that it is in compliance with the current requirements of applicable federal and state law.

Notwithstanding SurgiCare's belief that the relationship of physician partners to SurgiCare's surgery centers should not constitute illegal remuneration under the anti-kickback statute, no assurances can be given that a federal or state agency charged with enforcement of the anti-kickback statute and similar laws might not assert a contrary position or that new federal or state laws might not be enacted that would cause the physician partners' ownership interest in SurgiCare to become illegal, or result in the imposition of penalties on SurgiCare or certain of its facilities. Even the assertion of a violation could have a material adverse effect upon SurgiCare.

*Prohibition on Physician Ownership of Healthcare Facilities.* The Stark II provisions of the Omnibus Budget Reconciliation Act of 1993 amend the federal Medicare statute to prohibit a referral by a physician for designated health services to an entity in which the physician has an investment interest or other financial relationship, subject to certain exceptions. A referral under Stark II that does not fall within an exception is strictly prohibited. This prohibition took effect on January 1, 1995. Sanctions for violating Stark II can include civil monetary penalties and exclusion from Medicare and Medicaid.

Ambulatory surgery is not identified as a designated health service, and SurgiCare therefore, does not believe that ambulatory surgery is otherwise subject to the restrictions set forth in Stark II. Proposed regulations pursuant to Stark II that were published on January 9, 1998 specifically provide that services provided in any ambulatory surgery center and reimbursed under the composite payment rate are not designated health services.

However, unfavorable final Stark II regulations or subsequent adverse court interpretations concerning similar provisions found in recently enacted state statutes could prohibit reimbursement for treatment provided by the physicians affiliated with SurgiCare or its current or future centers to their patients.

Neither SurgiCare nor its subsidiaries are engaged in the corporate practice of medicine. SurgiCare does not employ any physicians to practice medicine on its behalf. SurgiCare and its subsidiaries merely

provide the venue for its physicians to perform surgical procedures. SurgiCare submits claims and bills to patients, for the facility fee only, and in no way is involved with the billing or submission of claims for any professional medical fees.

*Administrative Simplification and Privacy Requirements.* There are currently numerous legislative and regulatory initiatives at the state and federal levels addressing patient privacy concerns. In particular, on December 28, 2000, DHHS released final health privacy regulations implementing portions of the Administrative Simplification Provisions of HIPAA, and in August 2002 published revisions to the final rules. These final health privacy regulations generally required compliance by April 14, 2003 and extensively regulate the use and disclosure of individually identifiable health-related information. In addition, HIPAA requires DHHS to adopt standards to protect the security of health-related information. DHHS released final security regulations on February 20, 2003. The security regulations will generally become mandatory on April 20, 2005. These security regulations will require healthcare providers to implement administrative, physical and technical practices to protect the security of individually identifiable health-related information that is electronically maintained or transmitted. Further, as required by HIPAA, DHHS has adopted final regulations establishing electronic data transmission standards that all healthcare providers must use when submitting or receiving certain healthcare transactions electronically. Compliance with these regulations became mandatory on October 16, 2002. However, entities that filed for an extension before October 16, 2002 had until October 16, 2003 to comply with the regulations. SurgiCare filed extensions for its centers before October 16, 2002, and we believe that we were in compliance with the standards by October 16, 2003. We believe that the cost of compliance with these regulations will not have a material adverse effect on our business, financial position or results of operations. If we fail to comply with these regulations, we could suffer civil penalties up to \$25,000 per calendar year for each provision violated and criminal penalties with fines of up to \$250,000 per violation. In addition, our facilities will continue to remain subject to any state laws that are more restrictive than the privacy regulations issued under HIPAA. These statutes vary by state and could impose additional penalties.

SurgiCare cannot predict whether other regulatory or statutory provisions will be enacted by federal or state authorities which would prohibit or otherwise regulate relationships which SurgiCare has established or may establish with other healthcare providers or the possibility of material adverse effects on its business or revenues arising from such future actions. SurgiCare believes, however, that it will be able to adjust its operations to be in compliance with any regulatory or statutory provision, as may be applicable.

SurgiCare is subject to state and federal laws that govern the submission of claims for reimbursement. These laws generally prohibit an individual or entity from knowingly and willfully presenting a claim (or causing a claim to be presented) for payment from Medicare, Medicaid or other third party payors that is false or fraudulent. The standard for knowing and willful often includes conduct that amounts to a reckless disregard for whether accurate information is presented by claims processors.

Penalties under these statutes include substantial civil and criminal fines, exclusion from the Medicare program, and imprisonment. One of the most prominent of these laws is the federal False Claims Act, which may be enforced by the federal government directly, or by a *qui tam* plaintiff (a private person suing on the government's behalf under a statute that assigns a certain part of the penalty award to the government). Under the False Claims Act, both the government and the private plaintiff, if successful, are permitted to recover substantial monetary penalties, as well as an amount equal to three times actual damages. In recent cases, some *qui tam* plaintiffs have taken the position that violations of the anti-kickback statute and Stark II should also be prosecuted as violations of the federal False Claims Act. Even though SurgiCare believes that it has procedures in place to ensure the accurate completion of claims forms and requests for payment, the laws and regulations defining the proper parameters of proper Medicare or Medicaid billing are frequently unclear and have not been subjected to extensive judicial or agency interpretation. Billing errors can occur despite SurgiCare's best efforts to prevent or correct them, and no assurances can be given that the government will regard such errors as inadvertent and not in violation of the False Claims Act or related statutes.

## **Employees**

As of December 31, 2003, SurgiCare and its subsidiaries employed approximately 96 persons, 67 of whom were full-time employees and 29 of whom were part-time employees. Of the above, eight were employed at SurgiCare's corporate office in Houston, Texas and the remaining employees were employed by SurgiCare's surgery centers. SurgiCare believes its relationship with its employees to be good. SurgiCare does not have any employment or labor contracts, except for its Chief Executive Officer and Chief Financial Officer (see Note 18 to the financial statements in the Form 10-KSB included in Annex C to this proxy statement). Additionally, SurgiCare does not currently plan on having any such contracts with any operating physician on staff at any of its facilities. At this time, SurgiCare believes that all of its nurses and other employees have at-will employment relationships with SurgiCare.

## **Physician Shareholders**

SurgiCare has never entered into any arrangement, nor does it plan on entering into any arrangement with any physicians that operate at any of its facilities, to assure their continued use of its facilities. However, many of the surgeons operating in SurgiCare facilities own SurgiCare common stock. Depending on SurgiCare's profitability, the potential exists for all stockholders, both physician and non-physician, to benefit financially.

Surgeons specializing in podiatry, orthopedics, pain management, gynecology, ophthalmology and reconstructive, as well as general, surgery utilize SurgiCare's facilities. SurgiCare is not dependent on the revenue generated by patients brought by any single operating physician. At certain facilities, SurgiCare derives a large portion of its revenue from procedures performed within specific specialties. Currently, podiatry and pain management are the dominant specialties at Bellaire. Since Bellaire has over twenty podiatrists and three pain management physicians bringing patients to the surgery center, none are considered to be a major customer.

## **Description of Property**

SurgiCare's principal office is located at 12727 Kimberly Lane, Suite 200, Houston, Texas, 77024. This property is approximately 3,900 square feet, located on the 2nd floor of the Kimberley Medical Office Building above our Memorial Village surgery center. The property is leased from an unaffiliated third party for an initial term that expires in August 2006, but with an option to renew for an additional five years thereafter. Annual rental of \$55,272.96 is payable monthly in the amount of \$4,606.08. SurgiCare maintains tenant fire and casualty insurance on its property located in such building in an amount deemed adequate by SurgiCare. The four surgery centers in operation at December 31, 2003, lease space ranging from 10,000 to 14,000 square feet with remaining lease terms ranging from month-to-month to nine years.

In June 2002, SurgiCare acquired five properties from American International Industries, Inc., Texas Real Estate Enterprises, Inc. and MidCity Houston Properties, Inc. in exchange for 1.2 million shares SurgiCare Series AA preferred stock.