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November 2, 2012

VIA E-MAIL AND U.S. MAIL

Frank W. Urso, Esq.
General Counsel
Illinois Health Facilities and Services
Review Board
122 South Michigan Avenue, 7th Floor
Chicago, Illinois 60603

Re: Declaratory Ruling Request for Ritacca Laser & Cosmetic Center
Project No. 11-098

Dear Mr. Urso:

This Declaratory Ruling Request is being submitted in accordance with 77 Ill. Admin. Code § 1130.810(f) and in direct response to your request that we resubmit our alteration request (attached as **Exhibit 1**) as a declaratory ruling. Our declaratory ruling request presents four distinct questions that we request the Health Facilities and Services Review Board ("Board") address. Those questions are:

1. Would the Board please verify that declaratory ruling is the proper regulatory method by which to seek the removal, modification, and/or clarification of a condition placed upon a permit and, if so, further explain why such a request would not properly proceed as an alteration?

2. Will the Board please remove the condition currently in place upon the Ritacca Laser & Cosmetic Center ("Center") so as to allow it to act as a multi-specialty ambulatory surgery center without limitation, as that appears to be the only way in which the Center will be able to perform crossover procedures without risk of violating the Board's regulations or exceeding the scope of the categories of services it is authorized to perform?

3. Would the Board please clarify that since the Center is approved for the performance of the "plastics" category of service, this allows physicians to

perform the full spectrum of procedures that are a part of the school of medicine, both cosmetic and reconstructive, at the Center?

4. Would the Board please verify that, under the Board's regulations, crossover procedures (procedures that can be properly classified within more than one category of service, as that term is defined by Board regulations, or that can be properly performed by more than one school of medicine) can be appropriately performed at any facility that is approved for either of the relevant categories of service?

Declaratory Ruling Request No. 1

Would the Board please verify that declaratory ruling is the proper regulatory method by which to seek the removal, modification, and/or clarification of a condition placed upon a permit and, if so, further explain why such a request would not properly proceed as an alteration?

Dr. Daniel Ritacca ("Dr. Ritacca") has clearly exhibited his willingness to comply with the Board's regulations. He has spent the better part of the last year, and expended a considerable amount of time and resources, to ensure that he does not run afoul of the condition placed upon the Center by the Board. Despite Dr. Ritacca's considerable efforts, there remains substantial confusion with regard to what procedures can be properly performed at the Center given the cutting-edge nature of his practice.

Dr. Ritacca previously submitted this request as an alteration request because declaratory rulings are generally reserved for the interpretation and/or applicability of rules. We acknowledge that there are certainly some components of the questions presented herein which seek such clarification. However, given the multitude of permits upon which the Board places conditions, and the fact that modifying and/or removing (or refusing to remove or modify) those conditions could result in a substantive change to the dynamics of a project, we envisioned this more as an alteration than a declaratory ruling.

Obviously, Dr. Ritacca is prepared to submit this request in whatever form the Board deems appropriate and will abide by whatever reporting or provide whatever documentation the Board considers appropriate and necessary to allow the Center to continue to serve the members of its community and to appropriately expand his practice under the Board's regulations. However, the core issue that needs to be addressed is Dr. Ritacca being able to practice to the full scope of his training and his school of medicine and be able to perform procedures at his facility without fear of compliance actions or inadvertently violating the Board's rules.

The biggest concern in this type of a request proceeding as a declaratory ruling, rather than as an alteration, is that an alteration provides a clear and defined process by which review of

the Board's decision can be made. In the event that the Board elects to handle requests for the modification or removal of conditions as declaratory rulings, some appropriate form of review (administrative, judicial, or otherwise) will have to be provided for so as to avoid a meaningful denial of due process.

Declaratory Ruling Request No. 2

Will the Board please remove the condition currently in place upon the Center so as to allow it to act as a multi-specialty ambulatory surgery center without limitation, as that appears to be the only way in which the Center will be able to perform crossover procedures without risk of violating the Board's regulations or exceeding the scope of the categories of services it is authorized to perform?

Multi-specialty surgery centers are not required to appear before the Board to obtain regulatory approval each time they want to add or remove a specialty or category of service. That distinction, in fact, is explicitly provided for in the Board's regulations. *See* 77 Ill. Admin. Code 1110.1540(a)(2) ("AGENCY NOTE: A permit is required for the addition of a surgical specialty ***by a limited specialty ASTC***.") (emphasis added).

When Dr. Ritacca appeared before the Board, clarification was sought that he did not intend to add additional categories of service to the Center. To that, Dr. Ritacca agreed, as it has never been his intention to add additional categories of service to his facility. In taking extraordinary efforts to comply with the Board's condition, Dr. Ritacca coordinated with Board staff to obtain verification that specific procedures which he, in his professional medical opinion, considered to be an appropriate part of his aesthetic/reconstructive practice were appropriate to perform at the Center. Ultimately, it was determined *by Board staff* to be an improper procedure to perform at a "plastics" surgery center.

As an initial matter, we are of the opinion that it is unfair to place Board staff in a position to define the boundaries of any school of medicine or any particular category of service. It is certainly improper to do so without any relevant rules or regulations guiding such decisions. Moreover, as has been raised by Dr. Ritacca throughout his efforts to coordinate with the Board and its staff, there are multiple procedures which readily fall within more than one category of service, which are performed by more than one school of medicine, and which are reimbursed by both the government and private insurers when performed by more than one type of physician. Dr. Ritacca should be able to perform these types of procedures at his facility. If anything has been conclusively established over the several months Dr. Ritacca has been seeking clarification on this issue, it is that the Center, as operated by Dr. Ritacca, should no longer be constrained by the condition that was placed on the Center.

The original suggestion presented by Board staff was that in the event that Dr. Ritacca wanted to begin performing procedures that, for example, could also be classified as podiatry, he could come before the Board and seek to add podiatry as a new category of service through the certificate of need process. Then, in the future, if there were other reconstructive procedures that he wanted to perform that could also be classified as orthopedic, he could again appear before the Board and seek the addition of an orthopedics category of service. Unfortunately, this proposed solution is a practical and regulatory impossibility.

The rules require a facility to be able to show a minimum number of procedures that will be performed in a specialty before it can be added to a limited specialty ASTC. Part of the reasoning Multi-Specialty ASTCs cannot be made to go through the CON process every time a 'specialty' is to be added is because the facilities lack the physical capacity that would be needed before a new category of service could be added. Moreover, taking this approach would, in fact, unnecessarily expand the categories of service being provided.

Dr. Ritacca is not looking to add several new categories of service. He is looking to allow physicians who have practices that are focused on reconstructive or regenerative procedures to utilize the Center, which is notably well-suited to the performance of such procedures. ***To require Dr. Ritacca to add a new category of service for each school of medicine that these procedures cross over into would create an absurd result.*** In fact, it would create an impossible result because it would expand the capacity of the Center beyond the boundaries of the Board's regulations and beyond anything that Dr. Ritacca set out to do.

If the Board would like verification from Dr. Ritacca that he is not seeking to add endless schools of medicine, but rather to properly expand his business to better serve the community by providing complete and broad access to the full complement of procedures that fall under a reconstructive or regenerative practice, he is more than willing to do so. However, the only potential that Dr. Ritacca has to expand his practice without fear of inadvertently running afoul of the Board's regulations is the removal of this condition.

Declaratory Ruling Request No. 3

Would the Board please clarify that since the Center is approved for the performance of the "plastics" category of service, this allows physicians to perform the full spectrum of procedures that are a part of the school of medicine, both cosmetic and reconstructive, at the Center?

One of the core issues that has arisen during the course of the discussions between Dr. Ritacca and Board staff is the question of 'who defines the appropriate scope of practice for a particular category of service or a particular school of medicine?' The "category of service" under which Dr. Ritacca performs a substantial portion of his procedures is the broad category

identified as "plastics." "Plastics" encompasses a wide variety of procedures, including, but not limited to, purely cosmetic procedures, reconstructive procedures, aesthetic procedures, and regenerative procedures. The boundaries in which these procedures may cross over into another school of medicine or, as the Board defines it, into another category of service, are abundant.

The primary example we have utilized throughout these discussions has been the repair of a hammertoe. A podiatrist repairing a hammer to relieve pain, discomfort, or to correct a medical condition facing a patient would properly be the performance of podiatry. However, it is equally appropriate that a surgeon with a cosmetic/reconstructive practice would perform the exact same procedure for purely cosmetic reasons at the request of a patient. It creates an absurd result if Dr. Ritacca, to perform this procedure, would have to go through the process of establishing an entire podiatry practice at the Center. Another easy example is the discovery of a hernia during the course of an abdominoplasty. By the reasoning previously utilized, a plastic surgeon who discovered a hernia during this procedure would face three options: (1) add a "general surgery" category of service to their ASTC; (2) ignore the hernia while at the ASTC and take the patient to the hospital to repair the hernia there (subjecting the patient to additional anesthesia, risk of infection, discomfort, *etc.*); or (3) repair the hernia and risk violating the Board's regulations.

It is for this reason that we ask the Board to please clarify that it is the discretion of a medical professional, namely a physician, to determine whether a procedure is appropriately performed as part of a particular category of service and/or school of medicine.

Declaratory Ruling Request No. 4

Would the Board please verify that, under the Board's regulations, crossover procedures (procedures that can be properly classified within more than one category of service, as that term is defined by Board regulations, or that can be properly performed by more than one school of medicine) can be appropriately performed at any facility that is approved for either of the relevant categories of service?

This inquiry is potentially rendered moot dependent upon the answer provided in response to Declaratory Ruling Request No. 3. If these decisions are properly left to the discretion of medical professionals to determine the propriety of what procedures are appropriately performed in a particular category of service or school of medicine, then no further clarification should be needed here. However, if the Board intends to continue to play a role in determining the appropriate boundaries of the practice of medicine, then it will be necessary for the Board to clarify herein the boundaries associated with its defined categories of service. Therefore, we would request that the Board verify that any procedure which could be properly

performed as part of more than one category of service or more than one school of medicine can be properly performed at a facility that is approved for either of those categories of service.

We sincerely appreciate the time, attention, and effort of Board staff in addressing this issue and in responding to these issues over the past year. Dr. Ritacca is available to discuss these issues further as the Board and staff see fit.

We would appreciate the opportunity to, and hereby request the opportunity to, appear before the Board and discuss these matters. At that time we would be available to offer any clarification as to why Dr. Ritacca is seeking the relief and provide answers to the questions outlined above.

Should there be any questions, do not hesitate to contact me.

Respectfully submitted,

Mark J. Silberman

MJSga

Enclosures

cc: Dr. Daniel Ritacca

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EXHIBIT

1

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September 19, 2012

BY E-MAIL AND U.S. MAIL:

Dale Galassie
Illinois Health Facilities and Services
Review Board
525 W. Jefferson St. - 2nd Fl.
Springfield IL 62761

Re: Alteration Request for Permit: #11-098 Ritacca Laser Center, Vernon Hills

Dear Chairman Galassie:

On January 10, 2012 Dr. Daniel J. Ritacca ("Dr. Ritacca") appeared before the Illinois Health Facilities and Services Review Board ("HFSRB" or "Board") seeking to expand the Ritacca Laser Center (the "Center") located in Vernon Hills, Illinois. Dr. Ritacca already performed ophthalmologic and cosmetic/reconstructive procedures at the Center, but sought to add pain management as an additional category of service. In a unanimous vote, the Board approved Project 11-098.

During consideration of the Project, Vice-Chairman Hayes inquired whether or not Dr. Ritacca would agree to a condition requiring the Center to come back before the Board "if you wanted to enter another specialty." *January 10, 2012 Transcript* (relevant portion enclosed). Dr. Ritacca agreed. Mr. Carvalho clarified that this meant Dr. Ritacca would not be able to add additional categories of service, but "would be restricted to the three specialties that you would at that point have received approval for." Id. Again, Dr. Ritacca agreed, but himself clarified to the Board that there are reconstructive procedures he performs (e.g. repairing a hernia during an abdominoplasty) that do not constitute and should not be considered another category of service despite the fact that the procedure could be classified as part of more than one school of medicine.

Dr. Ritacca seeks to perform cutting edge reconstructive procedures at the Center and practice to the full extent of his school of medicine. Dr. Ritacca has been approached by multiple physicians seeking to perform cosmetic / reconstructive procedures at the Center. Despite his complete comfort that these are procedures which are an appropriate part of a reconstructive practice, Dr. Ritacca sought the guidance of Board staff who raised concerns these

may be viewed as performing other categories of service. Rather than risk violating the condition to his permit, Dr. Ritacca has elected to submit this alteration request to address these "crossover" procedures that are a proper part of a plastics / reconstructive practice, but could also be classified as part of another school of medicine.

An alteration request appears to be the appropriate procedure by which to obtain the clarity Dr. Ritacca needs. Section 1130.750 of the HFSRB regulations provides:

> Any change to a project subsequent to HFPB's issuance of a permit constitutes an alteration to the project. Projects for which a permit has been issued can be altered during the time period between the permit issuance and the date of project completion.

77 Ill. Admin. Code §1130.750. Dr. Ritacca does not seek to change the substantive project in any way. Rather, his goal is to clarify, alter, or remove the condition placed on his permit. The HFSRB specifically defined the date of 'project completion' for any permit issued with a condition as "when HFPB deems the conditions have been met." 77 Ill. Admin. Code §1130.140. No such finding has been made and the alteration being sought only relates to the limitations imposed by the condition to his permit. Therefore, this does appear to constitute an appropriate alteration request.

Dr. Ritacca is not looking to add additional categories of service to the Center. Dr. Ritacca wants to be able to perform procedures where the focus of the procedure is reconstructive or regenerative. By way of example, he has no interest and should not have to establish a podiatric practice simply to allow a physician to perform a cosmetic repair on a hammer toe. The fact that a podiatrist could perform this same procedure as a podiatric procedure should be of no effect. Dr. Ritacca wants to be able to expand into cutting edge reconstructive / regenerative procedures and invite other physicians who are capable of doing so. One such example is where stem cells (harvested from adult fat) are utilized as part of reconstructive procedures (e.g., injecting stem cells into diabetic or venous ulcers to assist in healing or to facilitate repairing Achilles tendon injuries). Dr. Ritacca wants to be able to perform these procedures without worry that doing so would jeopardize offending this Board.

Additionally, Dr. Ritacca hopes to avoid circumstances where quality medical professionals capable of providing reconstructive care to residents in the community are being discouraged from utilizing the Center. The confusion regarding exactly what procedures are allowed and which are not has yielded such circumstances. By way of one example, consider Dr. Paul Potach. He has patiently waited, hoping to obtain clarity from this Board as to what it considers would be appropriate. As explained in his letter (enclosed) the Center is perfectly suited for him to perform various cosmetic / reconstructive procedures that are already a part of his practice. He considers these procedures to be a proper part of an aesthetic / reconstructive practice but neither he, nor Dr. Ritacca, want to offend the Board or violate the condition

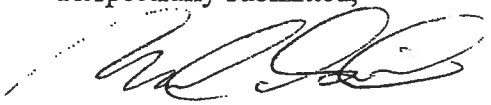
imposed upon the Center. That said, both believe the ultimate determination of what procedure is a part of a particular school of medicine should be left to the discretion of the physician.

Our hope is that the alteration process will facilitate an open discussion between Dr. Ritacca and the Board that will produce the clarity necessary to allow the Center to provide appropriate services and to allow Dr. Ritacca to practice to the full extent of his school of medicine. Whether the condition upon the Center needs to be clarified, or modified, or removed is a decision for the Board. That said, Dr. Ritacca is prepared to appear before the Board and address any question the Board members or staff might have.

The effect of this uncertainty on patient's access to care is real. Dr. Ritacca has turned away several physicians and patients because of his commitment to not run afoul of the condition imposed by this Board. He has done so despite the firm belief of himself and the physicians that all of these procedures are a part of the proper practice of an aesthetic / reconstructive practice. It is important to realize that Dr. Ritacca has been seeking clarity on this issue for several months and has engaged in multiple efforts to coordinate with Board counsel and staff to identify the right course of action. (Prior correspondence enclosed with exhibits). Dr. Ritacca appreciates all of the time, assistance, and guidance provided by Mr. Urso, Mr. Morado, and Board staff. However, it has become clear that this issue requires clarity that must emanate from the Board.

It would have, perhaps, been easier to simply go forward and seek forgiveness for any transgressions of which the Board learned. However, Dr. Ritacca believes in doing the right thing and doing things the right way. He is not willing to jeopardize his good name, his business, or his ability to continue to provide care within his community by moving forward without certainty. We hope, through this alteration request, to find the clarity that will allow the Center to continue providing increased access to quality care.

Respectfully submitted,



Mark J. Silberman

Enclosures (via hard copy, only)

cc: Dr. Daniel J. Ritacca

ENCLOSURES

break until 3:10, and we'll reconvene then.

(Recess).

VICE-CHAIRMAN HAYES: I'd like to call Item H-32, 11-098, Ritacca Laser Center, Limited. The applicants are at the table there, and could you swear in the applicant, and we'll have the State Agency Report then.

(Oath given)

MR. CONSTANTINO: Thank you, Mr. Chairman.

The applicant, Ritacca Laser Center, Ltd., proposes to add pain management services to an existing limited specialty ASTC in approximately 4,500 gross square feet of space. This ASTC currently offers ophthalmologic and plastic surgery. There is no cost to this project. The anticipated project completion date is August 31st, 2012.

The ASTC consists of two operating rooms and six recovery stations. Should the State Board approve this project, the facility will be classified as a multi-specialty ASTC. No public hearing was requested and no letters of support was received by the State Board Staff. One Impact Letter was received from Grand Oak Surgery Center.

Finally, there are existing facilities within the proposed TSA not operating at target occupancy.

Thank you, Mr. Chairman.

I would like to apologize for the mistake we made on your agenda for the last project. That was my mistake. I apologize for that.

VICE-CHAIRMAN HAYES: I accept. Thank you, Mike.

The applicants, could they identify themselves and give a presentation.

MR. KNIERY: Thank you, Mr. Vice-Chair. My name is John Kniery. I'm with Foley and Associates, healthcare consultants. To my left is Dr. Daniel Ritacca, and to my right is Dr. Jay Joshi. I'd like to have Dr. Ritacca make some opening comments about the facility and what brings us here today, and then I'll address a couple of the negative findings.

MR. RITACCA: Thank you very much for your time, Mr. Chairman and the Board. I'd like to thank the Staff for the support for this project.

Ritacca Laser Center specializes in eyes and plastic and reconstructive surgery, and we opened approximately two years ago. In December of 2008, fire destroyed our surgery center, which caused us to seek renewal of our permit. Even though this partially whipped out my practice, this impact was met with increasing

surgical volume and progress over the last two years, and approximately 2,000 hours are currently taking place in the two OR system, which I believe 80 percent would be 3,000 hours. Dr. Joshi approached me approximately in the last year. He's a pain specialist, Board-certified in anesthesia, with distinguished work in health organizations in Geneva at the World Health Organization and Fraud and Waste Reform in America. He's a consultant of pain management, and I felt with his help, I could get to this 80 percent level, and as I improved the volume my practice as well. He shares office space with me in the building where the surgery center is, and because of the 50 percent rule and the limited specialty, and I am presenting today to the Board.

I have conferred with two area hospitals and am encouraged and believe that the addition of a pain facility that accepts Medicaid and Blue Cross in the area is needed. I asked Condell to write me a letter to that effect, and they support my endeavors. No public hearing was requested, and I believe our opposition to the project does not accept major insurance or Medicaid.

I'm going to allow Dr. Joshi to make a statement.

MR. JOSHI: Thank you, Board members, and

thank you for hearing us. My name is Jay Joshi. I'm an anesthesiologist and an ABA, Board-certified interventional pain physician. Why is that important? Because it's the only accreditation that is recognized by the American College of because I think in the future, you're going to be approached by other people who are going to call themselves pain physicians. The reality is, the vast majority of pain physicians in America are not accredited by an American College of Medical Specialties accreditation. The reason for that is if you look at the landscape of pain, you'll find that by the Department of -- the Office of Internal Medicine published a study earlier this year. The demographics of chronic pain state that about one-third of America has some kind of chronic pain, over one hundred million people in America. The amount of people that just have the accreditation that's recognized in America is about 4,000. That doesn't mean they're good or bad or whatever. That just means how many people are recognized? You understand the deviation. You see, there is a huge deficiency of people that are actually accredited that do interventional pain management. How many of those do comprehensive or multi-modal pain management? That number is extremely small. It's a topic I've become very, very compassionate about. I even did work on this before I

graduated medical school. I did a lot of healthcare policy and world health organization. I've really put my money where my mouth is, even before I had money to put in my mouth, and I've worked on -- met some of our esteemed Congressmen of Illinois to try and get some reform, as well to try to increase patient satisfaction, patient care, decrease the healthcare over utilization, and streamline care, so especially for our population like Medicare, Medicaid patients, where we have a major problem in America. How do we take care of these patients? A lot of physicians don't even accept those insurance plans. Those are the things I've tried to work on.

I was a Medical Director for Pain at Alexian Brothers, and it was something -- another topic that I tried to streamline. At that hospital, just in the last year, I can tell you that I saw more Medicaid patients than anyone, any other pain physicians on staff there, and I think I actually saw more Medicaid patients than all the pain physicians on staff there combined.

We don't have those services. It's a major problem. Some of the pain physicians on staff at the hospital and the community don't even take Medicare anymore. So, it's a major problem, because chronic pain is more prevalent, obviously, as we all get older. We see it

in younger patients, too, from car accidents and things like that. As we all get older, we're all going to have it. Arthritis is one major form of chronic pain. We're all going to have it and management of that is really important. If you don't manage it, you start seeing the numbers that we see right now, which include a total cost, indirect and direct care, of $635 billion a year. To me that's insane. It can be lower if we sort of streamline care and actually take care of patients early on, instead of allowing them to enter this horrible, disabled sort of situation.

I have an office in the Schaumburg area, and Lake County is an area that's incredibly under served by qualified pain physicians, to the point where just the people who actually have the same credentials I do, in terms of just education, not in terms of anything else, just the credentials, I think we're only able to identify maybe 10 or 15 or something like that, for a population of over a million people. Obviously, that number is -- if you sort of look at just the demographics you're seeing maybe 300,000 who have chronic pain and ten people to manage it. That's insane. Out of those people, again, some of those people don't take Medicare. Some of those people don't take Medicaid. I looked very hard to find facilities where

I could take patients in Lake County. Of all of the places I approached and I called, all the surgery centers -- there's a couple, only two even remotely in the area, and I say "remotely". I'm talking half an hour, 40 minutes away, that offer pain, and none of them would let me even step foot on the property, because they don't want me there because of the competition. They just want to keep their little thing. So, they wouldn't even allow me. One of them is up for sale, so they won't -- obviously, they weren't interested in having anyone there.

The only person, the only surgery center that said, "Hey, we want to actually take care of your patients. We actually will take Medicare and Medicaid patients," was Dr. Ritacca. The only problem, obviously, is he didn't have a pain certification. So, it's taken us about probably close to a year now to be -- have the opportunity to be here today, and that's why we're here today. So, thank you for your time and, obviously, I'm open to questions.

One other point I want to mention. There's a veteran's hospital up by north Chicago. We've been approached for a year now to help provide services to the patients out at the VA up there. The only problem is we haven't been able to have a facility up in Lake County.

Our closest facility is down in Schaumburg. So, those patients would literally have to drive down an hour each way to be able to see us, and when you say see someone, it's not just procedures. There's follow-ups, there's -- sometimes there are medications and medication checks. You have to make sure that they're actually doing well. So, all those visits, they would have to drive down an hour to see us, and it's incredibly inconvenient. A lot of the VA patients are elderly patients that have a lot of health issues, and it's really hard for them to drive an hour each way. So, we've really been waiting for a facility in Lake County that's only 20 minutes away and something much more reasonable for those patients.

Thank you.

VICE-CHAIRMAN HAYES: Excuse me. Could I take a little break here? I'd like to note that Member Penn has left the meeting, while we still have a majority and quorum.

Proceed.

MR. KNIERY: Thank you. I would just like to address the findings in the State Agency Report briefly, if I may. As you review the report, you'll note that there are basically two issues: Under utilization of existing facility per population center, and the second is low

utilization of the area facilities, namely Granville Surgery Center.

The first issue, Dr. Ritacca and his physician associates have been rebuilding the utilization rates from the loss as a result of a facility fire. As reported in the application -- they will report also in the next annual questionnaire form -- their utilization has been around 2,000 hours and is growing on an annualized basis. As previously indicated, also Ritacca Laser Center is now whole again. So, it is projected that they will be able to continue improving their utilization rates to near optimal levels through ongoing operations and with existing case load. This project also supports the facility's ability to reach and maintain the optimal utilization by bringing on additional specialty and by using an existing healthcare resource.

The second issue, the area low utilization. We think that the focus of the Board and this criteria specifically is to utilize existing capacity in existing area surgery centers before establishing a new center and expending additional healthcare dollars. Although there appears to be an existing facility with utilization rates less than the State's optimal targets, Ritacca Laser Center is such a facility and should be utilized before a new

surgery center is established. To that end, we have a doctor who has approached the 50 percent licensing rule under ambulatory surgical treatment centers, which limits his own practice. He will need to be either licensed or find alternative locations to perform these procedures or a percent of these procedures. This project fulfills the Board's intent and rules by utilizing the existing healthcare resource of Ritacca Laser Center with the lowest amount of healthcare capital.

And it is important to point out that this project did receive a letter of support from Condell Medical Center, a local area hospital.

If I can direct your attention quickly to the chart in the State Agency Report on page 13 and 14, Table 2, I believe it is, there appears to be a total of 14 surgery centers, for instance. However, I'd like to point out that only 8 of those are actually within 30 minutes. From those, there are only two centers that actually do pain, pain specialty, Grand Oak Surgical Center, I believe, and Ravine Way Surgery Center. Ravine Way is nearly 30 minutes away at just over 28 minutes, and Dr. Joshi referred to Grand Oak Surgery Center, which was approved two and a half years before Dr. Ritacca's center, is just recently opened. As you see, don't even have their latest

year of utilization. They opened that recently, and they are already in the process of trying to find a buyer for that facility.

So, I'd like to turn it over -- back over to Dr. Ritacca for just one brief comment on charity care.

MR. SEWELL: Before you do that, not your last point, but the point before that, I was just totally lost. I'm sorry.

MR. CARVALHO: Why don't you -- you'd rather explain it than let me do it. So, why don't you explain that issue about if the physician does a certain amount of activity in their office that goes beyond 50 percent, then they have to have a license as a surgery center, not being able to do it as they have been doing it in just a doctor's office. Why don't you explain that?

MR. KNIERY: I can't say it much better than that. Let me try. There is a rule --

MR. CARVALHO: Okay. I guess I will. Right now in Illinois there are many things that a doctor is allowed to do in their office, office procedures, that might also be done in a surgery center, and so the way regulation works is we, as the Department of Public Health, don't regulate that activity if it's just occurring in a doctor's office, because the medical community doesn't want

that type of regulation. But the question became, well, at some point it's functioning as a surgery center, not as a doctor's office. What should that point be? And so the compromise written into the law is that after a certain amount of activity occurs in a doctor's office that looks like surgery, it now has to go in and get licensed as a surgery center, not work under the exception of a doctor's office exception. And so I think from what John said is that Dr. Joshi's activity -- the mix of stuff that he's doing in his office, the stuff that would account for surgery versus the stuff that doesn't account for surgery, the mix is approaching the point where he's going to start to look like a surgical center for our purposes, "our" being the Department of Health, and so then he's faced with a choice. He has to start doing the stuff that would look like surgery someplace else, or he has to himself try to become a surgical center, and that's when the Department of Public Health rule kicks in with yours, because he can't just become a surgical center by calling himself that. He has to apply to you. So, that's the interplay of our Department of Public Health law and rules and your law and rules.

MS. OLSON: I didn't understand whose utilization rate. You're talking about Dr. Joshi's

utilization rate?

MR. KNIERY: Correct, in his current practice. If you want me to go into it, I definitely can. The 50 percent rule comes from the Ambulatory Surgery Treatment Center licensing requirements, and it says -- and I'll quote -- "Any institution or building devoted primarily to the maintenance and operation of facilities for the performance of surgical procedures, as evidenced by use of the facilities for the performance of surgical procedures, which constitutes more than 50 percent of the activities at this location," end quote, should be considered a surgery center.

MS. OLSON: I get it.

MR. CARVALHO: Just to keep all the thoughts together at one point, if you recall, Member Eaker mentioned in another application the issue of facility fee, and what he was alluding to, if you, as a physician, are doing those surgical procedures in your office before your office has been converted to a surgery center, you are not eligible for being paid a facility fee. If you're doing them in an office that has been converted to a surgical center -- exact same procedures -- you now are eligible or the facility is eligible for a payment of a facility fee, and so, sometimes that issue comes up in your discussions

about is this saving money or not saving money or -- but that's the key. The facility fee doesn't go to the same stuff, just when it's in a doctor's office.

MR. KNIERY: The nice thing about this process, also we have provided those charges from what Dr. Joshi has projected he will charge, and we also, per your rules, are holding those constant for at least two years. So, that's a health saving facet that's built in your rules that we are applying for But I would like Dr. Ritacca to make a brief comment about the charity care policy at Ritacca Health Center.

DR. RITACCA: After sitting through the meeting today, I realized the concern of the Board members on charity care and public health, and I felt it was necessary to address that issue on charity care at my facility. Personally, for the last 15 years, I've helped establish Lake County's Gang Tattoo Removal Program, where we laser and surgically remove tattoos from gang members professionally for free. I helped Mr. John Hernandez (unintelligible) a gang outreach, as well as gang outreach programs throughout the state and even through Indiana and Missouri, because I get gang members all the way from there to remove their tattoos. I've done this voluntarily. I've never thought about how important this would be except

today at this meeting. There's often times I have feared for my life -- but I do it anyway -- because I don't know if I'm offending another gang member by removing his fellow member's tattoo. I didn't want to bring attention to this, but now I think it's important.

For the last 30 years, I taught at Cook County Hospital in three departments. For the last 10 years I've done it voluntarily, without even a mention for gas money or for parking. I've taught the specialty of dermatology plastics around the eyes, ophthalmology and maxillofacial surgery, and in regards to the tattoos, I've probably removed 1,000 gang-related tattoos, and I've helped these people return to normal lives.

The question may be, why haven't you done it in the surgery center? That's a good question, and I probably will do from now on, but I do it mostly for convenience of the patient and time, and in the surgery center, it would take me probably over an hour. In the suite next to the surgery center, it takes me about 15 minutes.

On page 99, Dr. Feldman from the John Stroger Hospital has written a letter to the Board, graciously praising my efforts in helping his students as well as addressing the needs of the under served, which I have done

up until this moment without boasting.

Thank you very much.

MR. KNIERY: I think at this time we'd be more than happy to answer any questions you may have.

VICE-CHAIRMAN HAYES: Board member questions? David?

MR. CARVALHO: Two quick questions. You mention your efforts to find places and you wouldn't find places that would accept Medicare and Medicaid. Hospitals accept Medicare and Medicaid. What is the impediment to doing what you want to do in a hospital.

DR. JOSHI: I have taken patients to hospitals. That's where I take them right now. I take them to Alexian Brothers in the Schaumburg area. The distance between there -- I have patients up in Gurnee, Grayslake. That's like -- I don't know -- an hour, hour and 15 minutes. That's a huge distance to bring them down.

The other issue is hospitals are far more expensive. I have patients who are Medicare patients, patients who are Blue Cross, whatever the case may be, Medicaid patients, patients who have sometimes 20 percent co-pay, and I have seen the EO's that the hospital charges for simple 10-minute procedure. They charge them $5,000. So that means my patient is stuck with a thousand dollars

from the hospital, which to me is an absolutely insane cost for a 15-minute procedure. I mean, the whole entire procedure in an office is maybe sometimes one-fifth, sometimes, of their 20 percent co-pay at the hospital.

The hospital -- we all share the procedure rooms. The patient before me could have been a MRSA patient, and so now I've got to contend with a perfectly healthy person, coming in for an elective procedure that they end up paying $1,000 for a co-pay, going into a room that someone has MRSA was in. I have done that. That's what I do, but, again, it's very far away from Lake County. Lake County is truly -- you all know where Lake County is. It's truly a geographic area that has been incredibly under served by people with my -- in my specialty, with my credentials, and the whole goal then is to target those patients in Lake County, those VA patients in Lake County, the Medicare patients in Lake County, and keep that population from driving an hour. And local hospitals support this project, too.

MR. CARVALHO: As luck would have it, my division is the Division of Patient Safety and Quality, and we're responsible for the issue of healthcare-acquired infections and dealing with it. The patients you see in your center, the patient before could also have MRSA.

MR. JOSHI: True.

MR. CARVALHO: In fact, recent reports from CMS have suggested that the rate of healthcare-acquired infections and the risk of infection in surgical centers has been grossly under estimated, due to lack of collection of appropriate data. So, I don't think you want to make the case that hospitals are where people get MRSA and surgery centers are where they don't, because I don't think that's an accurate statement.

Could I ask a question of Staff? On page 7 of our SAR, there's a chart that has a bunch of zeroes that I'm not sure I understand. One shows zero charity patients and the cost of charity care being $4,000. Are there typos in that chart?

MR. CONSTANTINO: No. This is what was provided to us by the applicants, David.

MR. CARVALHO: Okay. I guess the question is for the applicant. This chart shows zero charity patients, zero Medicaid patients, zero revenue, but the cost of charity care was 4,000. Could you explain both the -- your point was that this was a facility that takes Medicaid, but the chart has zero Medicaid. Just please explain the chart.

DR. RITACCA: Yes. Thank you for asking that.

That's a good question.

I've taken Medicaid now for as long as I've been open. We'll say two and a half years. My accounts receivable for Medicaid is close to $300,000. I've not received one penny of it.

MR. CARVALHO: This is cash accounting? It's a fact that you have billed Medicaid, but you haven't received the money?

DR. RITACCA: Correct. I've tried -- and I probably have scores of pages -- working with Medicaid, and I can give names to the Medicaid office, why I can't get paid, and hopefully -- close to three years -- we are working through this problem. So that's -- hope that number for Medicaid will no longer be zero, but I continue to take Medicaid, which I think that shows my good faith and believing in the system, because I'm not sure how many other physicians would continue to finance surgery for all of this time and not get paid and continue to take Medicaid.

MR. KNIERY: If I may elaborate, also, on a comment that Dr. Ritacca made a little while ago, Dr. Ritacca -- the charity care that he was mentioning earlier, this is care he provides personally through his practice. That's what he was saying, and I told him, I

wish you would have been doing this as part of the surgery center and you could report it as such. But he is -- I will speak for him. He is very committed to taking care of this population.

VICE-CHAIRMAN HAYES: This is a limited specialty ambulatory surgery center?

MR. KNIERY: It is right now, yes.

VICE-CHAIRMAN HAYES: Under our rules, you'll be going to a multi-specialty with adding this new service.

MR. KNIERY: Yes.

VICE-CHAIRMAN HAYES: Would you be -- accept an amendment that basically would require you, if you wanted to enter a new -- beyond the pain management and beyond ophthalmology and plastic surgery, if you wanted to enter another specialty, that you would have to come back to the Board and do that?

MR. RITACCA: Absolutely, Vice-Chairman.

I would just like to mention a few things about plastic and reconstructive surgery. Sometimes we can enter into another specialty -- and I don't want to misconstrue. When we move somebody's jaw, I don't want it to look like we're maxillofacial. When we fix a hernia, I don't want it to look like we're general surgery. So, I do not plan to do any of those. I do not have the space nor

do I have the time. I'm looking to get to the 80 percent rule. I'm very content to doing plastic and reconstructive surgery. So, as Mr. Constantino can tell you, there was at one point that we do vein surgery. I have a vascular surgeon that fixed his varicose veins. It was construed as general surgery. I have no plans on doing any other specialty, but in the future, if the need arises in my specialty, plastics and reconstructive, that I feel like the Board is misinterpreting this as another procedure, I will come in front of you, yes.

MR. KNIERY: Does that answer your question?

VICE-CHAIRMAN HAYES: Yes.

MR. CARVALHO: Dr. Ritacca, let me just clarify what we're asking. You may have misunderstood. Theoretically, under ordinary procedures, by virtue of adding a third specialty -- if this were approved without condition, you could add thereafter anything. Not that you could branch out a little, you could really add anything, and the Chair has asked would you accept a condition on this application that you couldn't add -- the things that you could otherwise add but for this condition? In other words, you would be restricted to the three specialties that you would at that point have received approval for.

DR. RITACCA: I absolutely agree with this,

but I hope you understand as -- the confusion. When we do an abdominoplasty and we fix a hernia, I'm not doing general surgery.

MR. CARVALHO: That's a slightly different issue, which is an issue that you currently have authority to do two categories and what are the boundaries of those categories. That's an issue that I know you've addressed with us. The difference -- this is a slightly different issue that I think you now understand, is that theoretically, you do do ophthalmology. If this were approved and you could receive the third category, you could then start doing ophthalmology and you could start -- I don't want to speculate. And that's the thing that the Chairman was suggesting. Would you accept the condition that limits you to the three?

DR. RITACCA: Yes.

VICE-CHAIRMAN HAYES: Thank you.

Seeing no other questions, I'd like to -- may I have a motion to approve Project 11-098 to establish a multi-specialty ASTC in Vernon Hills, with a condition that if there is additional specialties beyond ophthalmology, plastic surgery, and pain management, that the applicants would come before the Board for additional specialties?

MR. GREIMAN: So moved.

MR. SEWELL: Second.

MR. ROATE: Motion made by Justice Greiman, seconded by Mr. Sewell.

Mr. Eaker?

MR. EAKER: Yes.

MR. ROATE: Justice Greiman?

MR. GREIMAN: Yes.

MR. ROATE: Mr. Hayes?

VICE-CHAIRMAN HAYES: Yes.

MR. ROATE: Mr. Hilgenbrink?

MR. HILGENBRINK: Yes.

MR. ROATE: Ms. Olson?

MS. OLSON: Yes.

MR. ROATE: Mr. Penn? Absent.

Mr. Sewell?

MR. SEWELL: Yes.

MR. ROATE: That's six votes in the affirmative.

VICE-CHAIRMAN HAYES: Motion passes. Thank you.

DR. RITACCA: God bless you, and thank you.

(Pause)

VICE-CHAIRMAN HAYES: Now we'd like to move to our next item on our agenda, which is I-01. This is

To the Health Facilities and Services Review Board:

My name is Dr. Paul Potach and I have been a practicing physician for over 25 years. I am a 1986 graduate of the Ohio College of Podiatric Medicine with a Doctorate of Podiatric Medicine. I specialize in laser surgery and am familiar with Dr. Daniel Ritacca and the Ritacca Laser and Cosmetic Surgery Center ("Ritacca Laser Center").

The Ritacca Center is a surgery center which is perfectly suited for me (and others) to perform the full complement of aesthetic / reconstructive procedures that are a part of my practice. Included amongst the possible procedures are laser treatments for nail fungi, warts or bunions, treatment for hammer toes, or reconstructive joint procedures. These are all procedures that, as a practicing physician, I consider an appropriate part of an aesthetic / reconstructive practice. I am looking to perform these procedures at the Ritacca Laser Center because I consider these to be appropriate aesthetic / reconstructive procedures – not because they are podiatric procedures.

There has been hesitancy in allowing the performance of procedures such as these at the Ritacca Laser Center because of the potential that the Health Facilities and Services Review Board ("Board") could also consider these procedures as a part of a podiatric practice. It is undeniable that there are various procedures that cross over between the various schools of medicine. No conscientious physician wants to perform procedures beyond the scope of their practice, nor is Dr. Ritacca willing to risk exceeding the limitations of his Certificate of Need permit by allowing the practice of specialties beyond those authorized by his facility's permit.

From a patient care perspective, the Ritacca Laser Center is perfectly situated to allow for the performance of these various procedures. From an access to healthcare perspective, it provides the public greater access to quality care to have a full array of aesthetic / reconstructive procedures that can be performed at the facility. However, from the perspective of a conscientious physician, the lack of clarity arising from the potential that the Board may substitute its own determinations for my professional medical judgment, is disconcerting.

I would be more than willing to perform any and all of these procedures under the umbrella of the Ritacca Laser Center's authority to perform plastic / aesthetic / reconstructive procedures. However, there remains an unnecessary risk that the Board or its staff will subsequently conclude that I was performing a podiatric procedure, rather than a reconstructive procedure, and thereby jeopardize the facility's permit. I firmly believe it would be in everyone's best interest if the necessary clarity could be achieved or the limitation removed so that this facility could be utilized to provide the full complement of reconstructive procedures available; regardless of what other school of medicine they might cross over into.

Respectfully submitted,

Dr. Paul Potach

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March 16, 2012

BY E-MAIL AND U.S. MAIL

Frank Urso, Esq.
General Counsel
Illinois Health Facilities and Services Review Board
122 South Michigan Avenue
7th Floor
Chicago IL 60603

Re: Clarification of Issues Surrounding Condition to Project #11-098 ("Project")
Ritacca Laser Center, Vernon Hills

Dear Frank:

We represent Dr. Daniel Ritacca ("Dr. Ritacca") and Ritacca Laser Center ("the Center"). There appears to be a need to clarify the condition that was placed on this ambulatory surgery treatment center ("ASTC") located at 230 Center Drive, Vernon Hills, Illinois, which was recently reclassified by the Health Facilities and Services Review Board ("HFSRB" or "Board") as a multi-specialty ASTC. The permit letter is attached as Exhibit A.

Our hope is to clarify that the condition on the Center's permit is to limit the Center's practice to ophthalmology, plastic surgery, and General/Other (pain management) and not to limit, in any way, the scope of the Center's practice of ophthalmology, plastic/reconstructive surgery, and/or pain management. Recent exchanges between Dr. Ritacca and Board staff have called that issue into question. Dr. Ritacca has no intention of violating any valid conditions imposed by the Board, but wants to be certain there is no limitation beyond that which was presented to Dr. Ritacca at the January 10, 2012 Board meeting.

On January 10, 2012, Dr. Ritacca appeared before the HFSRB seeking authority to expand the services provided at the Center by adding pain management. 'Pain management' is not one of the categories of services explicitly identified in Board regulations. *See* 77 Ill. Admin. Code 1110.1540(a)(1). Rather, the HFSRB considers 'pain management' as a specialty under the 'catch-all' of General/Other, which includes "any procedure that is not included in the other specialties." 77 Ill. Admin. Code 1110.1540(a)(1)(D). The Board unanimously approved the Project. The Board vote tallies from the January 10, 2012 meeting are attached as Exhibit B.

During consideration of the project, the following exchange took place between Dr. Ritacca and Vice Chairman John Hayes regarding the Center's transition from a limited specialty ambulatory surgery center and a multi-specialty ambulatory surgery center:

> VICE-CHAIRMAN HAYES: This is a limited specialty ambulatory surgery center?
>
> MR. KNIERY: It is right now, yes.
>
> VICE-CHAIRMAN HAYES: Under our rules, you'll be going to a multi-specialty with adding this new service.
>
> MR. KNIERY: Yes.
>
> VICE-CHAIRMAN HAYES: Would you be - - accept an amendment that basically would require you, if you wanted to enter a new - - beyond the pain management and beyond ophthalmology and plastic surgery, ***if you wanted to enter another specialty***, that you would have to come to the Board and do that?
>
> MR. (sic) RITACCA: Absolutely, Vice-Chairman.

Transcript of January 10, 2012 HFSRB Meeting (relevant portion attached as Exhibit C) (emphasis added). The condition imposed related to the addition of ***other surgical specialties***, not to limit his performance of procedures that are part of the Center's ophthalmologic practice, its plastics/reconstructive/aesthetics practice, or its pain management practice. Nor was the condition to require approval for the addition of procedures related to any of these schools of medicine.

In fact, during the discourse regarding this application, Dr. Ritacca raised this issue and made it explicitly clear that there are procedures that are part of his plastics/reconstructive practice that could be seen to 'cross-over' into other specialties, and he did not want to be prohibited from performing those types of procedures (*e.g.*, repairing a hernia during the course of a reconstructive procedure). Dr. Ritacca made it a point to voice his concern that the Board not limit his performance of procedures related to ophthalmology, plastic surgery, and/or pain management. The Board voted and approved his project ***after*** he clarified that the condition was not an effort to limit him in that manner.

Mr. Carvalho intervened to clarify the condition being discussed and framed the issue quite well: that the limitation the Board was seeking to place on the Center was that, unlike other multi-specialty ASTCs, the Center would not be able to add ***other surgical specialties*** without coming before the Board. Dr. Ritacca agreed to this but, again, clarified that various procedures (*e.g.*, performing the repair of a hernia during abdominoplasty) does not and should

not constitute 'general surgery.' Mr. Carvalho then acknowledged that was a separate issue and reiterated that the Board's condition did not relate to the boundaries of the Center's authorized categories but, rather, was to limit the Center expanding beyond the three categories already approved.

Dr. Ritacca's interest is in being able to have physicians at the Center engage in the practice of ophthalmology, plastic/reconstructive surgery, and pain management to the full extent allowed by each school of medicine. For example, Dr. Ritacca has no interest in establishing a podiatric practice, but should be able to perform a cosmetic repair on a hammer-toe in his capacity as a plastic/reconstructive surgeon. Dr. Ritacca is not seeking to establish an oral/maxillofacial practice, but this should not prohibit him from performing a legitimate and recognized plastic/reconstructive procedure requiring the setting of a jaw. These, and countless other procedures, are reimbursed by public and private insurers as part of the appropriate practice of a plastic/reconstructive surgeon, despite the fact that they could also be reimbursed as the practice of a podiatrist or a maxillofacial surgeon. It is not the role of the Board, nor is it appropriate to place Board staff in a position, to make medical assessments regarding in which school of medicine a particular procedure should be classified.

Moreover, Dr. Ritacca should not have to seek Board approval every time a properly licensed plastic surgeon proposes to perform an aesthetic/reconstructive procedure if the procedure could be properly considered ***either*** plastic surgery ***or*** be classified under another specialty. Dr. Ritacca should not have to come before the Board when a new procedure to manage pain is developed to obtain verification from the Board that it is proper for him as a physician to perform this new procedure. It would convert the Board from being a health planning entity into the role of managing individualized medical practices.

Dr. Ritacca was willing to limit the Center's practice to three surgical specialties: (1) ophthalmology; (2) plastic surgery; and (3) General/Other (pain management). However, recent interaction with Board staff has left Dr. Ritacca with the concern that he will have to obtain Board approval to provide various ***procedures*** at the Center. The reason for this is that while Dr. Ritacca considers these procedures appropriately a part of his practice (and a part of the surgical specialties he has been approved to provide), the Board staff has concluded these ***procedures*** exceed the boundaries of ophthalmology, plastic surgery, and/or pain management. Setting aside our disagreement with staff's conclusion, this is simply not the condition that Dr. Ritacca agreed to and a review of the transcript verifies this is not the condition that the Board imposed, or even sought to impose, upon Dr. Ritacca.

We hope this issue can be clarified by your simple verification in response to this correspondence. If it would be of assistance, we are more than happy to have an in-person meeting with you, as Board counsel, and the appropriate staff or Board members. We are prepared to be as specific as necessary in describing the types of procedures that are at issue and their nexus to the proper practice of ophthalmology, plastic/reconstructive surgery, and/or pain

management. It is not Dr. Ritacca's desire to skirt any rules and, certainly, he does not want to act in disregard of his responsibilities. Of all of the options available, Dr. Ritacca concluded that issuing this correspondence seemed to be the most direct, most amicable, and most appropriate way to resolve his concerns.

We look forward to your response, we appreciate your taking the time to consider this matter, and we invite any questions you have or clarification you might seek.

Best regards,

Mark J. Silberman

MJSmjs
encs

cc: Dr. Daniel J. Ritacca

STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD
525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 • FAX: (217) 785-4111

January 24, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Teresa Dino
Ritacca Laser Ctr. Ltd.
230 Center Drive, Suite 101
Vernon Hills, IL 60061

RE: **PERMIT: #11-098 Ritacca Laser Center, Vernon Hills**

Dear Ms. Dino:

On January 10, 2012, the Illinois Health Facilities and Services Review Board (HFSRB) approved the application for permit for the referenced project based upon the project's substantial conformance with the applicable standards and criteria of Part 1110 and 1120. In arriving at a decision, HFSRB Board considered the findings contained in the State Agency Report, the application material, and public hearing and public participation testimony.

- **PROJECT: #11-098 – Ritacca Laser Center, Vernon Hills** – The permit holders are approved to add Pain Management Services to an existing limited-specialty Ambulatory Surgery Treatment Center (ASTC) located at 230 Center Drive, Vernon Hills, Illinois, and be reclassified as a multi-specialty ASTC.

- **PERMIT HOLDERS:** Ritacca Laser Center, Ltd., and Daniel J. Ritacca, M.D.

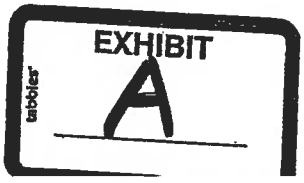
- **CONDITIONS AND STIPULATIONS:** The permit holders must submit a Certificate of Need application to the Illinois Health Facilities and Service Review Board before adding additional surgical specialties outside of Ophthalmologic, Plastic, or Pain Management services.

- **PERMIT AMOUNT:** $0

- **PROJECT OBLIGATED BY:** January 10, 2013

- **PROJECT COMPLETION DATE:** August 31, 2012

This permit is valid only for the defined construction or modification, site, amount and the named permit holder **and is not transferable or assignable.** In accordance with the Planning Act, the permit is valid until such time as the project has been completed, provided that all post permit requirements have been fulfilled, pursuant to the requirements of 77 Ill. Adm. Code 1130.



The permit holder is responsible for complying with the following requirements in order to maintain a valid permit. Failure to comply with the requirements may result in expiration of the permit or in State Board action to revoke the permit.

1. OBLIGATION-PART 1130.720

   The project must be obligated **by the Project Obligation Date,** unless the permit holder obtains an "Extension of the Obligation Period" as provided in 77 Ill. Adm. Code 1130.730. Obligation is to be reported as part of the first annual progress report for permits requiring obligation within 12 months after issuance. For major construction projects which require obligation within 18 months after permit issuance, obligation must be reported as part of the second annual progress report. If project completion is required prior to the respective annual progress report referenced above, obligation must be reported as part of the notice of project completion. The reporting of obligation must reference a date certain when at least 33% of total funds assigned to project cost were expended or committed to be expended by signed contracts or other legal means.

2. ANNUAL PROGRESS REPORT-PART 1130.760

   An annual progress report must be submitted to HFSRB every 12-month from the permit issuance date until such time as the project is complete.

3. PROJECT COMPLETION REQUIREMENTS-PART 1130.770

   The permit holder must submit a written notice of project completion as defined in Section 1130.140. Each permit holder shall notify IHFSRB within 30 days following the project completion date and provide supporting documentation within 90 days following the completion date and must contain the information required by Section 1130.770.

   This permit does not exempt the project or permit holder from licensing and certification requirements, including approval of applicable architectural plans and specifications prior to construction. **Please note the Illinois Department of Public Health will not license the proposed facility until such time as all of the permit requirements have been completed.**

   Should you have any questions regarding the permit requirements, please contact Mike Constantino at 217-782-3516.

Sincerely,

Courtney Avery, Administrator
Illinois Health Facilities and Services Review Board

cc: Dale Galassie, Chairman

Results of January 10, 2012 meeting of the
Illinois Health Facilities and Services Review Board

Members Present: Vice-Chairman John Hayes, Ron Eaker, Alan Greiman, Robert Hilgenbrink, Kathy Olson, David Penn, and Richard Sewell.

Members Absent: Chairman Dale Galassie, James Burden

Post Permit Items Approved by Chairman (none)

Permit renewal Requests (none)

Extension Requests (none)

Exemption Requests (none)

Declaratory Rulings (none)

Alteration Requests(none)

Health Care Worker Self-Referral Act (none)

Applications Subsequent to Initial Review

11-070	Neomedica Bridgeport (Change of ownership)	
11-071	FMNCA Dialysis Services Burbank (Change of ownership)	
11-072	Neomedica Evergreen Park (Change of ownership)	
11-073	Neomedica Hazel Crest (Change of ownership)	
11-074	Neomedica Hoffman Estates (Change of ownership)	
11-075	FMC Lakeview (Change of ownership)	
11-076	Neomedica Marquette Park (Change of ownership)	
11-077	Neomedica Melrose Park (Change of ownership)	
11-078	FMC Midway (Change of ownership)	
11-079	FMC Niles (Change of ownership)	**Approved together**
11-080	Neomedica Cumberland (Change of ownership)	**7-0-2 absent**
11-081	FMC Northcenter (Change of ownership)	
11-082	Neomedica North Kilpatrick (Change of ownership)	
11-083	FMC Polk (Change of ownership)	
11-084	Neomedica Rolling Meadows (Change of ownership)	
11-085	FMC Roseland (Change of ownership)	
11-086	FMC Ross Dialysis-Englewood (Change of ownership)	
11-087	FMC South Chicago (Change of ownership)	
11-088	Neomedica South Holland (Change of ownership)	
11-089	Neomedica South Shore (Change of ownership)	
11-090	FMC West Belmont (Change of ownership)	
11-092	North Main (Change of ownership	**Approved together**
11-093	RAI Centre West – Springfield (Change of ownership)	**7-0-2 absent**
11-094	RAI Lincoln Highway (Change of ownership)	
11-096	FMC Cicero (Establish a 16-station ESRD Facility)	**Intent to Deny 4-3-2 absent**
11-097	Shiloh Dialysis (Establish a 12-station ESRD Facility)	**Approved 6-1-2 absent**
11-099	FMC Prairie Meadows (Establish a 12-station ESRD Facility)	**Applicant Deferred**
11-102	Lake Park Dialysis (Discontinue ESRD Facility; Establish 32-station ESRD Facility	**Approved 6-1-2 absent**
11-100	Oak Surgical Institute (Add Surgical Specialty; Establish Multi-Specialty ASTC)	**Intent to Deny 4-3-2 absent**
11-095	Palos Hills Surgery Center (Establish an ASTC)	**Intent to Deny 4-3-2 absent**
11-098	Ritacca Laser Center, Ltd. (Add Surgical Specialty; Establish Multi-Specialty ASTC)	**Approved 6-0-3 absent**

Applications Subsequent to Intent to Deny

11-038	FMC Naperbrook (Establish 16-Station ESRD Facility) Establish 16-Station ESRD Facility)	**Approved 6-0-3 absent**

EXHIBIT B

break until 3:10, and we'll reconvene then.

(Recess).

VICE-CHAIRMAN HAYES: I'd like to call Item H-32, 11-098, Ritacca Laser Center, Limited. The applicants are at the table there, and could you swear in the applicant, and we'll have the State Agency Report then.

(Oath given)

MR. CONSTANTINO: Thank you, Mr. Chairman.

The applicant, Ritacca Laser Center, Ltd., proposes to add pain management services to an existing limited specialty ASTC in approximately 4,500 gross square feet of space. This ASTC currently offers ophthalmologic and plastic surgery. There is no cost to this project. The anticipated project completion date is August 31st, 2012.

The ASTC consists of two operating rooms and six recovery stations. Should the State Board approve this project, the facility will be classified as a multi-specialty ASTC. No public hearing was requested and no letters of support was received by the State Board Staff. One Impact Letter was received from Grand Oak Surgery Center.

Finally, there are existing facilities within the proposed TSA not operating at target occupancy.

Thank you, Mr. Chairman.

I would like to apologize for the mistake we made on your agenda for the last project. That was my mistake. I apologize for that.

VICE-CHAIRMAN HAYES: I accept. Thank you, Mike.

The applicants, could they identify themselves and give a presentation.

MR. KNIERY: Thank you, Mr. Vice-Chair. My name is John Kniery. I'm with Foley and Associates, healthcare consultants. To my left is Dr. Daniel Ritacca, and to my right is Dr. Jay Joshi. I'd like to have Dr. Ritacca make some opening comments about the facility and what brings us here today, and then I'll address a couple of the negative findings.

MR. RITACCA: Thank you very much for your time, Mr. Chairman and the Board. I'd like to thank the Staff for the support for this project.

Ritacca Laser Center specializes in eyes and plastic and reconstructive surgery, and we opened approximately two years ago. In December of 2008, fire destroyed our surgery center, which caused us to seek renewal of our permit. Even though this partially whipped out my practice, this impact was met with increasing

surgical volume and progress over the last two years, and approximately 2,000 hours are currently taking place in the two OR system, which I believe 80 percent would be 3,000 hours. Dr. Joshi approached me approximately in the last year. He's a pain specialist, Board-certified in anesthesia, with distinguished work in health organizations in Geneva at the World Health Organization and Fraud and Waste Reform in America. He's a consultant of pain management, and I felt with his help, I could get to this 80 percent level, and as I improved the volume my practice as well. He shares office space with me in the building where the surgery center is, and because of the 50 percent rule and the limited specialty, and I am presenting today to the Board.

I have conferred with two area hospitals and am encouraged and believe that the addition of a pain facility that accepts Medicaid and Blue Cross in the area is needed. I asked Condell to write me a letter to that effect, and they support my endeavors. No public hearing was requested, and I believe our opposition to the project does not accept major insurance or Medicaid.

I'm going to allow Dr. Joshi to make a statement.

MR. JOSHI: Thank you, Board members, and

thank you for hearing us. My name is Jay Joshi. I'm an anesthesiologist and an ABA, Board-certified interventional pain physician. Why is that important? Because it's the only accreditation that is recognized by the American College of because I think in the future, you're going to be approached by other people who are going to call themselves pain physicians. The reality is, the vast majority of pain physicians in America are not accredited by an American College of Medical Specialties accreditation. The reason for that is if you look at the landscape of pain, you'll find that by the Department of -- the Office of Internal Medicine published a study earlier this year. The demographics of chronic pain state that about one-third of America has some kind of chronic pain, over one hundred million people in America. The amount of people that just have the accreditation that's recognized in America is about 4,000. That doesn't mean they're good or bad or whatever. That just means how many people are recognized? You understand the deviation. You see, there is a huge deficiency of people that are actually accredited that do interventional pain management. How many of those do comprehensive or multi-modal pain management? That number is extremely small. It's a topic I've become very, very compassionate about. I even did work on this before I

graduated medical school. I did a lot of healthcare policy and world health organization. I've really put my money where my mouth is, even before I had money to put in my mouth, and I've worked on -- met some of our esteemed Congressmen of Illinois to try and get some reform, as well to try to increase patient satisfaction, patient care, decrease the healthcare over utilization, and streamline care, so especially for our population like Medicare, Medicaid patients, where we have a major problem in America. How do we take care of these patients? A lot of physicians don't even accept those insurance plans. Those are the things I've tried to work on.

I was a Medical Director for Pain at Alexian Brothers, and it was something -- another topic that I tried to streamline. At that hospital, just in the last year, I can tell you that I saw more Medicaid patients than anyone, any other pain physicians on staff there, and I think I actually saw more Medicaid patients than all the pain physicians on staff there combined.

We don't have those services. It's a major problem. Some of the pain physicians on staff at the hospital and the community don't even take Medicare anymore. So, it's a major problem, because chronic pain is more prevalent, obviously, as we all get older. We see it

in younger patients, too, from car accidents and things like that. As we all get older, we're all going to have it. Arthritis is one major form of chronic pain. We're all going to have it and management of that is really important. If you don't manage it, you start seeing the numbers that we see right now, which include a total cost, indirect and direct care, of $635 billion a year. To me that's insane. It can be lower if we sort of streamline care and actually take care of patients early on, instead of allowing them to enter this horrible, disabled sort of situation.

I have an office in the Schaumburg area, and Lake County is an area that's incredibly under served by qualified pain physicians, to the point where just the people who actually have the same credentials I do, in terms of just education, not in terms of anything else, just the credentials, I think we're only able to identify maybe 10 or 15 or something like that, for a population of over a million people. Obviously, that number is -- if you sort of look at just the demographics you're seeing maybe 300,000 who have chronic pain and ten people to manage it. That's insane. Out of those people, again, some of those people don't take Medicare. Some of those people don't take Medicaid. I looked very hard to find facilities where

I could take patients in Lake County. Of all of the places I approached and I called, all the surgery centers -- there's a couple, only two even remotely in the area, and I say "remotely". I'm talking half an hour, 40 minutes away, that offer pain, and none of them would let me even step foot on the property, because they don't want me there because of the competition. They just want to keep their little thing. So, they wouldn't even allow me. One of them is up for sale, so they won't -- obviously, they weren't interested in having anyone there.

The only person, the only surgery center that said, "Hey, we want to actually take care of your patients. We actually will take Medicare and Medicaid patients," was Dr. Ritacca. The only problem, obviously, is he didn't have a pain certification. So, it's taken us about probably close to a year now to be -- have the opportunity to be here today, and that's why we're here today. So, thank you for your time and, obviously, I'm open to questions.

One other point I want to mention. There's a veteran's hospital up by north Chicago. We've been approached for a year now to help provide services to the patients out at the VA up there. The only problem is we haven't been able to have a facility up in Lake County.

Our closest facility is down in Schaumburg. So, those patients would literally have to drive down an hour each way to be able to see us, and when you say see someone, it's not just procedures. There's follow-ups, there's -- sometimes there are medications and medication checks. You have to make sure that they're actually doing well. So, all those visits, they would have to drive down an hour to see us, and it's incredibly inconvenient. A lot of the VA patients are elderly patients that have a lot of health issues, and it's really hard for them to drive an hour each way. So, we've really been waiting for a facility in Lake County that's only 20 minutes away and something much more reasonable for those patients.

Thank you.

VICE-CHAIRMAN HAYES: Excuse me. Could I take a little break here? I'd like to note that Member Penn has left the meeting, while we still have a majority and quorum.

Proceed.

MR. KNIERY: Thank you. I would just like to address the findings in the State Agency Report briefly, if I may. As you review the report, you'll note that there are basically two issues: Under utilization of existing facility per population center, and the second is low

utilization of the area facilities, namely Granville Surgery Center.

The first issue, Dr. Ritacca and his physician associates have been rebuilding the utilization rates from the loss as a result of a facility fire. As reported in the application -- they will report also in the next annual questionnaire form -- their utilization has been around 2,000 hours and is growing on an annualized basis. As previously indicated, also Ritacca Laser Center is now whole again. So, it is projected that they will be able to continue improving their utilization rates to near optimal levels through ongoing operations and with existing case load. This project also supports the facility's ability to reach and maintain the optimal utilization by bringing on additional specialty and by using an existing healthcare resource.

The second issue, the area low utilization. We think that the focus of the Board and this criteria specifically is to utilize existing capacity in existing area surgery centers before establishing a new center and expending additional healthcare dollars. Although there appears to be an existing facility with utilization rates less than the State's optimal targets, Ritacca Laser Center is such a facility and should be utilized before a new

surgery center is established. To that end, we have a doctor who has approached the 50 percent licensing rule under ambulatory surgical treatment centers, which limits his own practice. He will need to be either licensed or find alternative locations to perform these procedures or a percent of these procedures. This project fulfills the Board's intent and rules by utilizing the existing healthcare resource of Ritacca Laser Center with the lowest amount of healthcare capital.

And it is important to point out that this project did receive a letter of support from Condell Medical Center, a local area hospital.

If I can direct your attention quickly to the chart in the State Agency Report on page 13 and 14, Table 2, I believe it is, there appears to be a total of 14 surgery centers, for instance. However, I'd like to point out that only 8 of those are actually within 30 minutes. From those, there are only two centers that actually do pain, pain specialty, Grand Oak Surgical Center, I believe, and Ravine Way Surgery Center. Ravine Way is nearly 30 minutes away at just over 28 minutes, and Dr. Joshi referred to Grand Oak Surgery Center, which was approved two and a half years before Dr. Ritacca's center, is just recently opened. As you see, don't even have their latest

year of utilization. They opened that recently, and they are already in the process of trying to find a buyer for that facility.

So, I'd like to turn it over -- back over to Dr. Ritacca for just one brief comment on charity care.

MR. SEWELL: Before you do that, not your last point, but the point before that, I was just totally lost. I'm sorry.

MR. CARVALHO: Why don't you -- you'd rather explain it than let me do it. So, why don't you explain that issue about if the physician does a certain amount of activity in their office that goes beyond 50 percent, then they have to have a license as a surgery center, not being able to do it as they have been doing it in just a doctor's office. Why don't you explain that?

MR. KNIERY: I can't say it much better than that. Let me try. There is a rule --

MR. CARVALHO: Okay. I guess I will. Right now in Illinois there are many things that a doctor is allowed to do in their office, office procedures, that might also be done in a surgery center, and so the way regulation works is we, as the Department of Public Health, don't regulate that activity if it's just occurring in a doctor's office, because the medical community doesn't want

that type of regulation. But the question became, well, at some point it's functioning as a surgery center, not as a doctor's office. What should that point be? And so the compromise written into the law is that after a certain amount of activity occurs in a doctor's office that looks like surgery, it now has to go in and get licensed as a surgery center, not work under the exception of a doctor's office exception. And so I think from what John said is that Dr. Joshi's activity -- the mix of stuff that he's doing in his office, the stuff that would account for surgery versus the stuff that doesn't account for surgery, the mix is approaching the point where he's going to start to look like a surgical center for our purposes, "our" being the Department of Health, and so then he's faced with a choice. He has to start doing the stuff that would look like surgery someplace else, or be has to himself try to become a surgical center, and that's when the Department of Public Health rule kicks in with yours, because he can't just become a surgical center by calling himself that. He has to apply to you. So, that's the interplay of our Department of Public Health law and rules and your law and rules.

MS. OLSON: I didn't understand whose utilization rate. You're talking about Dr. Joshi's

utilization rate?

MR. KNIERY: Correct, in his current practice. If you want me to go into it, I definitely can. The 50 percent rule comes from the Ambulatory Surgery Treatment Center licensing requirements, and it says -- and I'll quote -- "Any institution or building devoted primarily to the maintenance and operation of facilities for the performance of surgical procedures, as evidenced by use of the facilities for the performance of surgical procedures, which constitutes more than 50 percent of the activities at this location," end quote, should be considered a surgery center.

MS. OLSON: I get it.

MR. CARVALHO: Just to keep all the thoughts together at one point, if you recall, Member Eaker mentioned in another application the issue of facility fee, and what he was alluding to, if you, as a physician, are doing those surgical procedures in your office before your office has been converted to a surgery center, you are not eligible for being paid a facility fee. If you're doing them in an office that has been converted to a surgical center -- exact same procedures -- you now are eligible or the facility is eligible for a payment of a facility fee, and so, sometimes that issue comes up in your discussions

about is this saving money or not saving money or -- but that's the key. The facility fee doesn't go to the same stuff, just when it's in a doctor's office.

MR. KNIERY: The nice thing about this process, also we have provided those charges from what Dr. Joshi has projected he will charge, and we also, per your rules, are holding those constant for at least two years. So, that's a health saving facet that's built in your rules that we are applying for But I would like Dr. Ritacca to make a brief comment about the charity care policy at Ritacca Health Center.

DR. RITACCA: After sitting through the meeting today, I realized the concern of the Board members on charity care and public health, and I felt it was necessary to address that issue on charity care at my facility. Personally, for the last 15 years, I've helped establish Lake County's Gang Tattoo Removal Program, where we laser and surgically remove tattoos from gang members professionally for free. I helped Mr. John Hernandez (unintelligible) a gang outreach, as well as gang outreach programs throughout the state and even through Indiana and Missouri, because I get gang members all the way from there to remove their tattoos. I've done this voluntarily. I've never thought about how important this would be except

today at this meeting. There's often times I have feared for my life -- but I do it anyway -- because I don't know if I'm offending another gang member by removing his fellow member's tattoo. I didn't want to bring attention to this, but now I think it's important.

For the last 30 years, I taught at Cook County Hospital in three departments. For the last 10 years I've done it voluntarily, without even a mention for gas money or for parking. I've taught the specialty of dermatology plastics around the eyes, ophthalmology and maxillofacial surgery, and in regards to the tattoos, I've probably removed 1,000 gang-related tattoos, and I've helped these people return to normal lives.

The question may be, why haven't you done it in the surgery center? That's a good question, and I probably will do from now on, but I do it mostly for convenience of the patient and time, and in the surgery center, it would take me probably over an hour. In the suite next to the surgery center, it takes me about 15 minutes.

On page 99, Dr. Feldman from the John Stroger Hospital has written a letter to the Board, graciously praising my efforts in helping his students as well as addressing the needs of the under served, which I have done

up until this moment without boasting.

Thank you very much.

MR. KNIERY: I think at this time we'd be more than happy to answer any questions you may have.

VICE-CHAIRMAN HAYES: Board member questions? David?

MR. CARVALHO: Two quick questions. You mention your efforts to find places and you wouldn't find places that would accept Medicare and Medicaid. Hospitals accept Medicare and Medicaid. What is the impediment to doing what you want to do in a hospital.

DR. JOSHI: I have taken patients to hospitals. That's where I take them right now. I take them to Alexian Brothers in the Schaumburg area. The distance between there -- I have patients up in Gurnee, Grayslake. That's like -- I don't know -- an hour, hour and 15 minutes. That's a huge distance to bring them down.

The other issue is hospitals are far more expensive. I have patients who are Medicare patients, patients who are Blue Cross, whatever the case may be, Medicaid patients, patients who have sometimes 20 percent co-pay, and I have seen the EO's that the hospital charges for simple 10-minute procedure. They charge them $5,000. So that means my patient is stuck with a thousand dollars

from the hospital, which to me is an absolutely insane cost for a 15-minute procedure. I mean, the whole entire procedure in an office is maybe sometimes one-fifth, sometimes, of their 20 percent co-pay at the hospital.

The hospital -- we all share the procedure rooms. The patient before me could have been a MRSA patient, and so now I've got to contend with a perfectly healthy person, coming in for an elective procedure that they end up paying $1,000 for a co-pay, going into a room that someone has MRSA was in. I have done that. That's what I do, but, again, it's very far away from Lake County. Lake County is truly -- you all know where Lake County is. It's truly a geographic area that has been incredibly under served by people with my -- in my specialty, with my credentials, and the whole goal then is to target those patients in Lake County, those VA patients in Lake County, the Medicare patients in Lake County, and keep that population from driving an hour. And local hospitals support this project, too.

MR. CARVALHO: As luck would have it, my division is the Division of Patient Safety and Quality, and we're responsible for the issue of healthcare-acquired infections and dealing with it. The patients you see in your center, the patient before could also have MRSA.

MR. JOSHI: True.

MR. CARVALHO: In fact, recent reports from CMS have suggested that the rate of healthcare-acquired infections and the risk of infection in surgical centers has been grossly under estimated, due to lack of collection of appropriate data. So, I don't think you want to make the case that hospitals are where people get MRSA and surgery centers are where they don't, because I don't think that's an accurate statement.

Could I ask a question of Staff? On page 7 of our SAR, there's a chart that has a bunch of zeroes that I'm not sure I understand. One shows zero charity patients and the cost of charity care being $4,000. Are there typos in that chart?

MR. CONSTANTINO: No. This is what was provided to us by the applicants, David.

MR. CARVALHO: Okay. I guess the question is for the applicant. This chart shows zero charity patients, zero Medicaid patients, zero revenue, but the cost of charity care was 4,000. Could you explain both the -- your point was that this was a facility that takes Medicaid, but the chart has zero Medicaid. Just please explain the chart.

DR. RITACCA: Yes. Thank you for asking that.

That's a good question.

I've taken Medicaid now for as long as I've been open. We'll say two and a half years. My accounts receivable for Medicaid is close to $300,000. I've not received one penny of it.

MR. CARVALHO: This is cash accounting? It's a fact that you have billed Medicaid, but you haven't received the money?

DR. RITACCA: Correct. I've tried -- and I probably have scores of pages -- working with Medicaid, and I can give names to the Medicaid office, why I can't get paid, and hopefully -- close to three years -- we are working through this problem. So that's -- hope that number for Medicaid will no longer be zero, but I continue to take Medicaid, which I think that shows my good faith and believing in the system, because I'm not sure how many other physicians would continue to finance surgery for all of this time and not get paid and continue to take Medicaid.

MR. KNIERY: If I may elaborate, also, on a comment that Dr. Ritacca made a little while ago, Dr. Ritacca -- the charity care that he was mentioning earlier, this is care he provides personally through his practice. That's what he was saying, and I told him, I

wish you would have been doing this as part of the surgery center and you could report it as such. But he is -- I will speak for him. He is very committed to taking care of this population.

VICE-CHAIRMAN HAYES: This is a limited specialty ambulatory surgery center?

MR. KNIERY: It is right now, yes.

VICE-CHAIRMAN HAYES: Under our rules, you'll be going to a multi-specialty with adding this new service.

MR. KNIERY: Yes.

VICE-CHAIRMAN HAYES: Would you be -- accept an amendment that basically would require you, if you wanted to enter a new -- beyond the pain management and beyond ophthalmology and plastic surgery, if you wanted to enter another specialty, that you would have to come back to the Board and do that?

MR. RITACCA: Absolutely, Vice-Chairman.

I would just like to mention a few things about plastic and reconstructive surgery. Sometimes we can enter into another specialty -- and I don't want to misconstrue. When we move somebody's jaw, I don't want it to look like we're maxillofacial. When we fix a hernia, I don't want it to look like we're general surgery. So, I do not plan to do any of those. I do not have the space nor

do I have the time. I'm looking to get to the 80 percent rule. I'm very content to doing plastic and reconstructive surgery. So, as Mr. Constantino can tell you, there was at one point that we do vein surgery. I have a vascular surgeon that fixed his varicose veins. It was construed as general surgery. I have no plans on doing any other specialty, but in the future, if the need arises in my specialty, plastics and reconstructive, that I feel like the Board is misinterpreting this as another procedure, I will come in front of you, yes.

MR. KNIERY: Does that answer your question?

VICE-CHAIRMAN HAYES: Yes.

MR. CARVALHO: Dr. Ritacca, let me just clarify what we're asking. You may have misunderstood. Theoretically, under ordinary procedures, by virtue of adding a third specialty -- if this were approved without condition, you could add thereafter anything. Not that you could branch out a little, you could really add anything, and the Chair has asked would you accept a condition on this application that you couldn't add -- the things that you could otherwise add but for this condition? In other words, you would be restricted to the three specialties that you would at that point have received approval for.

DR. RITACCA: I absolutely agree with this,

but I hope you understand as -- the confusion. When we do an abdominoplasty and we fix a hernia, I'm not doing general surgery.

MR. CARVALHO: That's a slightly different issue, which is an issue that you currently have authority to do two categories and what are the boundaries of those categories. That's an issue that I know you've addressed with us. The difference -- this is a slightly different issue that I think you now understand, is that theoretically, you do do ophthalmology. If this were approved and you could receive the third category, you could then start doing ophthalmology and you could start -- I don't want to speculate. And that's the thing that the Chairman was suggesting. Would you accept the condition that limits you to the three?

DR. RITACCA: Yes.

VICE-CHAIRMAN HAYES: Thank you.

Seeing no other questions, I'd like to -- may I have a motion to approve Project 11-098 to establish a multi-specialty ASTC in Vernon Hills, with a condition that if there is additional specialties beyond ophthalmology, plastic surgery, and pain management, that the applicants would come before the Board for additional specialties?

MR. GREIMAN: So moved.

MR. SEWELL: Second.

MR. ROATE: Motion made by Justice Greiman, seconded by Mr. Sewell.

Mr. Eaker?

MR. EAKER: Yes.

MR. ROATE: Justice Greiman?

MR. GREIMAN: Yes.

MR. ROATE: Mr. Hayes?

VICE-CHAIRMAN HAYES: Yes.

MR. ROATE: Mr. Hilgenbrink?

MR. HILGENBRINK: Yes.

MR. ROATE: Ms. Olson?

MS. OLSON: Yes.

MR. ROATE: Mr. Penn? Absent.

Mr. Sewell?

MR. SEWELL: Yes.

MR. ROATE: That's six votes in the affirmative.

VICE-CHAIRMAN HAYES: Motion passes. Thank you.

DR. RITACCA: God bless you, and thank you.

(Pause)

VICE-CHAIRMAN HAYES: Now we'd like to move to our next item on our agenda, which is I-01. This is

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May 17, 2012

BY E-MAIL AND U.S. MAIL

Frank W. Urso, Esq.
General Counsel
Illinois Health Facilities and
Services Review Board
122 South Michigan Avenue, 7th Floor
Chicago, IL 60603

Re: Technical Assistance Request for Ritacca Laser & Cosmetic Center

Dear Frank:

I want to again thank you and Juan for taking the time to discuss with me the circumstances facing Dr. Daniel Ritacca ("Dr. Ritacca") and the Ritacca Laser & Cosmetic Center (the "Center"). As we discussed, an increasing portion of Dr. Ritacca's practice includes the opportunity to perform cutting-edge cosmetic and reconstructive procedures, several of which we have acknowledged could be categorized as plastics/reconstructive or within another school of medicine ("crossover procedures"). Our discussion focused on two central issues: (1) how Dr. Ritacca could perform these crossover procedures without running afoul of the Health Facilities and Services Review Board's ("HFSRB" or "Board") regulations; and (2) how Dr. Ritacca could obtain clarity as to what constitutes an acceptable expansion of his business.

The conclusion we reached as a result of our discussion was that Dr. Ritacca is welcome to undertake any procedure that can be appropriately categorized as plastics/reconstructive (or any procedure related to one of the other categories of service for which he has been approved). However, if the Board concludes that the Center has been performing procedures that exceed the scope of the plastics/reconstructive category of service, the Board would retain the right to pursue an enforcement action against the Center. In addressing how to avoid the potential for such an enforcement action, we also discussed the possibility (albeit an unwieldy and burdensome possibility) of Dr. Ritacca bringing specific inquiries regarding the propriety of procedures to the Board so as to coordinate with HFSRB staff, and perhaps Dr. Burden, to obtain clarity ***prior*** to approving performance of the procedure at the Center.

The Board's position is inherently fair. However, as a practical matter, substantial uncertainty remains for Dr. Ritacca, and this uncertainty yields the potential for considerable risk and expense that could jeopardize the future of his practice. To be clear, Dr. Ritacca does not want to violate any rule or regulation of the Board or the condition to his project. To be equally clear, Dr. Ritacca would like to see his practice grow and expand along the forefront of the plastics/reconstructive field of medicine. His goal is the same as the foundational principal of the Board: the orderly, efficient, and economic development of his practice. These competing desires are what has led to Dr. Ritacca's request for technical assistance.

We would like the opportunity to schedule an in-person technical assistance meeting, preferably with both you and Dr. Burden present. The purpose would be to identify and explore the available options provided by the Board's rules and to assess which option could offer the clarity this situation requires. Dr. Ritacca does not intend to add multiple categories of service; but he also does not want to risk the imposition of fines or adverse action against his license just because there is a divergence in opinion of the how to properly categorize a particular procedure. Conceptually, there must be an appropriate means under the Board's rules to provide this type of clarity to a physician who wants nothing more than to expand his practice of medicine without violating any of the Board's rules or regulations.

While we perceive the need to obtain the Board's input and want to obtain your guidance, we have given this matter substantial thought and see the following available options:

- Discuss procedures (either specifically or generally) with Dr. Burden, you, and staff to obtain an advance assessment of what the Board deems proper;
- Modify or clarify the condition currently limiting the Center's ability to expand;
- Seek removal of the condition currently in place for the Center;
- Pursue a Certificate of Need seeking the addition of a "General" category of service that will allow the Board to assess and approve the performance of these crossover procedures;
- Pursue a Certificate of Need seeking to add any and all specialties for which there might be a crossover procedure[1]; or

[1] If this were the preferred course of action, we believe the more reasonable and economically prudent course of action would then be to discuss the proper means by which to seek some modification, clarification, or lifting of the condition facing the Center, as compared to other multispecialty ambulatory surgical treatment centers.

- Present this issue as a declaratory ruling so as to allow for an open public discussion with the Board.

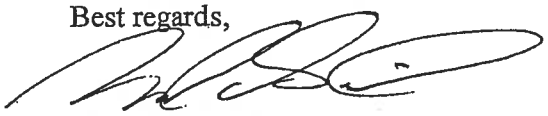
We think an initial in-person meeting to discuss Dr. Ritacca's concerns would be the most appropriate and effective manner by which to identify and help Dr. Ritacca pursue the appropriate path capable of producing the desired result. We will make ourselves available to meet at a time and in a location that best suits your schedules.

We hope it is clear that this issue is borne out of respect for the Board and its rules. Rather than risk running afoul of the Board's expectations, or chance that something will go unnoticed, or simply wait to engage in future debate in the event that a controversy ever arises, we believe it is in everyone's interest to openly, and in advance, discuss our objectives and determine how those goals can be properly pursued under the Board's rules and with the Board's understanding, support, and approval. We cannot imagine anyone having an issue with what it is we are trying to accomplish and would rather do it the right way from day one.

We appreciate that this is a unique situation and a similarly unique request. However, it is equally unique for the owner of a health care center to be so proactively intent on complying with both the letter and spirit of the Board's rules that he will take such efforts to ensure continued compliance. All Dr. Ritacca wants is to be able to pursue the orderly, efficient, and economic development of the Center without unnecessary risk of offending the Board.

We appreciate your taking the time to consider this matter, and are available to discuss any questions and schedule a meeting.

Best regards,



Mark J. Silberman

STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

122 South Michigan Ave. Suite 700 • Chicago, ILLINOIS 60603 • (312) 814-5418

May 21, 2012

Mark J. Silberman, Esq.
Duane Morris LLP
190 South LaSalle Street, Suite 3700
Chicago, IL 60603-3433

Re: Ritacca Laser and Cosmetic Center

Dear Mark:

Thank you for sending the May 17, 2012 letter which explained the issues that face your client, Dr. Ritacca. Your letter outlines various options that you feel would be available to resolve these issues. Before I address the options let me reiterate that the Board expects Dr. Ritacca and his associates at the Ritacca Laser and Cosmetic Center to comply with the current Board rules and statutory provisions that deal with ambulatory surgical treatment centers and the condition listed on the January 20, 2012 permit letter (see the attached permit letter).

After reviewing your correspondence, Board staff and I agree with several of the options described in your letter. As you know the permit holder, Ritacca Laser Center in Vernon Hills, is approved for ophthalmologic, plastic, and pain management services. If this permit holder would like to perform "crossover procedures", he needs to apply for a certificate of need to add additional specialties that would allow for these crossover procedures. Simultaneously, the permit applicant could ask the Board to modify or clarify the current condition in the January 20, 2012 permit letter. The other option, as you mentioned in your letter, is to seek a declaratory ruling from the Board regarding the issues raised in your correspondence.

Please feel free to contact me if you have any questions.

Sincerely,

Frank W. Urso
General Counsel
Illinois Health Facilities and Service Review Board

Anaya, Gloria

From: Anaya, Gloria on behalf of Silberman, Mark J.
Sent: Friday, November 02, 2012 10:08 AM
To: 'Urso, Frank'
Cc: Silberman, Mark J.
Subject: Ritacca Laser & Cosmetic Ctr, Declaratory Ruling Request, Project #11-098
Attachments: 20121102095436394.pdf; 20121102095541544.pdf; 20121102095616646.pdf

Frank:

Please see attached. The first attachment is a declaratory ruling request and the other two are the enclosures to the letter/request. A hard copy will follow by mail. If you have any questions, please do not hesitate to contact me.

Regards,

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