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October 24, 2014

Via UPS Overnight

Ms. Courtney R. Avery
Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: Ownership of Freestanding Emergency Center
Project # 14-040
NorthPointe Health and Wellness Campus

Dear Ms. Avery,

We are counsel to Beloit Health System ("Beloit") and are writing you in response to a letter sent to you by counsel for SwedishAmerican Hospital dated October 21, 2014. In that letter, SwedishAmerican Hospital takes the position that the Illinois Health Facilities and Services Review Board (the "Board") should not act upon Beloit's application in Project No. 14-040 because the proposed freestanding emergency center will not be owned and operated by a hospital licensed in the state of Illinois. As we explain below, there is no such requirement in Illinois law and Beloit's application in this project is properly before the Board.

Section 32.5(a) of the Illinois Emergency Medical Services System Act ("EMS Act") sets forth the requirements that an applicant must meet in order to establish a freestanding emergency center ("FSEC"). The first criterion, set forth at 210 ILCS § 32.5(a)(1), deals exclusively with where an FSEC may be located, while the second criterion, set forth at 210 ILCS § 32.5(a)(2), deals exclusively with who may own or control an FSEC. Despite this clear distinction, SwedishAmerican Hospital is basing its ownership argument on the first criterion, while ignoring the criterion that explicitly addresses ownership. A proper reading of the EMS Act demonstrates that Beloit meets the criterion for ownership of an FSEC.

Section 32.5(a)(2) of the EMS Act provides that an FEC must be "wholly owned or controlled by an Associate or Resource Hospital, but is not a part of the hospital's physical plant." The EMS Act does not define the terms "Associate Hospital" or "Resource Hospital," but they are defined in the regulations that accompany the EMS Act. 77 ILAC § 518.1000 defines those terms as follows:

Associate Hospital – a hospital participating in an approved EMS System in accordance with the EMS System Program Plan; fulfilling the same clinical and communications requirements as the Resource Hospital; having a basic or comprehensive emergency department with 24-hour physician coverage; and having a functioning intensive care unit and/or a cardiac care unit.

Resource Hospital – the hospital with the authority and the responsibility for an EMS System as outlined in the Department-approved EMS System Program Plan.

Notably, neither of those definitions includes an explicit requirement that the hospital be licensed in Illinois. Based on the arguments in its letter, SwedishAmerican Hospital would assert that the use of the term "hospital" in those definitions implicitly establishes a requirement of Illinois licensure on the basis that the EMS Act defines the term "hospital" to have the same meaning as it has under the Hospital Licensing Act. However, that would be an incorrect assertion also.

The EMS Act does indeed define the term "hospital" to have the same meaning as it does under the Hospital Licensing Act. However, the definition of "hospital" in the Hospital Licensing Act also does not contain any reference to location or licensure, as it simply defines the scope of services and functions that make an entity a "hospital":

"Hospital" means any institution, place, building, buildings on a campus, or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of 2 or more unrelated persons admitted for overnight stay or longer in order to obtain medical, including obstetric, psychiatric and nursing, care of illness, disease, injury, infirmity, or deformity.

210 ILCS § 85/3. Beloit must simply be an Associate Hospital or Resource Hospital in order to own and control the proposed FSEC. On September 9, 2014, Beloit provided the Board with documentation of its Associate Hospital status, which was recognized and accepted by the Board in a letter from you dated September 12, 2014. Beloit's status as an Associate Hospital has not changed.

SwedishAmerican also states in its letter that there are public policy reasons for requiring Illinois licensure so that the owner and operator of the FSEC will be subject to regulatory oversight by the Illinois Department of Public Health ("Department"). This argument simply ignores the fact that the FSEC itself will be subject to regulatory oversight as an entity licensed under the EMS Act. The fact that Beloit Hospital is not an Illinois licensed facility will not have any impact on the Department's ability to effectively regulate and oversee the proposed FSEC. Additionally, the involvement of out-of-state hospitals in EMS services is quite common,

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particularly in the area of pediatrics. The Department recognizes the participation and importance of out-of-state hospitals in function of the EMS networks that serve Illinois residents. Out-of-state hospitals from Indiana, Iowa, Missouri and Wisconsin, including Beloit Memorial Hospital, already provide valuable functions and services to Illinois residents in their respective EMS regions (see, e.g., http://www.luhs.org/depts/emsc/2007annualreport/Hospital_by_EMS_Region_Index.pdf).

Furthermore, Beloit has demonstrated throughout this process and previous processes that it respects the authority of the Department and this Board and intends to comply with all applicable Illinois laws. The proper public policy focus for this project should be on ensuring that the residents served by the proposed FSEC have convenient and timely access to high quality emergency medical services, which this project will provide.

We appreciate the opportunity to address this issue. Please do not hesitate to contact me at 317-977-1458 or mswearingen@hallrender.com if you have any questions or require additional information.

Sincerely,

HALL, RENDER, KILLIAN, HEATH & LYMAN, P.C.

A handwritten signature in black ink, appearing to read 'M. Swearingen', with a large, stylized loop at the end.

Mark J. Swearingen, Esq.

cc: Mike Constantino, Supervisor, Project Review Section
Timothy M. McKeveatt, President and CEO, Beloit Health System
Ed Parkhurst, PRISM Healthcare Consulting