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May 31, 2016

Via Federal Express

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**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

Mr. Michael Constantino
Illinois Health Facilities and Services Review
Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: Southern Illinois Gastrointestinal Endoscopy Center (Proj. No. 15-061)

Dear Mr. Constantino:

On behalf of Zahoor Makhdoom, M.D.; Southern Illinois Gastrointestinal Endoscopy Center, LLC; and Southern Illinois GI Specialists, LLC (collectively, the "Applicants"), this letter is in response to the Illinois Health Facilities and Services Review Board ("State Board") inquiry to certain hospitals within the service area of the proposed Southern Illinois Gastrointestinal Endoscopy Center. We would like to provide more detail regarding why the Applicants filed an application to establish a limited specialty ambulatory surgical treatment center ("ASTC"), to discuss the transition of health care delivery from fee for service to a value based reimbursement system and to respond Southern Illinois Healthcare's ("SIH") comments dated May 24, 2016.

1. Purpose of Certificate of Need Application

In short, the Applicants filed a certificate of need ("CON") application to establish a limited specialty ASTC to avoid compliance issues with the Illinois Department of Public Health ("IDPH"), which befell two of our recent clients which provide endoscopy services. As you are aware, the ASTC licensure regulations allow a physician to perform surgical procedures within his office without an IDPH surgery center license so long as surgical procedures do not constitute more than 50 percent of the activities at that location. See 77 Ill. Admin. Code 205.110. As noted in our May 17, 2016 letter, Dr. Makhdoom is approaching the threshold implicating the requirement to obtain an IDPH license. We believe our advice to our client to pursue licensure is the appropriate path as it would be poorly reasoned on our part to suggest that the threshold should be crossed to trigger a compliance investigation/action with IDPH.

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Accordingly, to avoid any potential IDPH compliance issues, the Applicants filed a CON application to establish a limited specialty ASTC.

2. Utilizing Other Area Providers

a. Area Hospitals

With regard to alternatives to maintaining his practice at his office location, the State Board made an inquiry to certain hospitals in the area regarding their capacity to accommodate Dr. Makhdoom's endoscopic procedure volume. In their response, the hospitals stated Dr. Makhdoom was on the medical staffs at Memorial Hospital of Carbondale and St. Joseph Memorial Hospital in Murphysboro until July 1, 2015 and that he had block time at both hospitals until he resigned from the medical staffs. What the hospitals failed to mention in their response was that, until 2012, Dr. Makhdoom had block time at Carbondale Memorial Hospital on Tuesdays, Wednesdays and Fridays. To accommodate its own employed physicians, Carbondale Memorial Hospital eliminated Dr. Makhdoom's Tuesday block time in 2012. Additionally, St. Joseph Memorial Hospital incorrectly states Dr. Makhdoom's block time was scheduled from 7:30 a.m. to 3:00 p.m. in its GI labs four days one week alternating with three days the following week. Contrary to hospital's assertion, Dr. Makhdoom's block time was scheduled from 7:30 a.m. to 1:00 p.m. on Monday, Tuesday and Friday, but because Tuesday was set up for urologists, he could not schedule gastroenterology procedures at St. Joseph Memorial Hospital on that day. After the hospital eliminated part of his block time, Dr. Makhdoom began to perform endoscopic procedures to his office to accommodate patient demand.

Furthermore, Dr. Makhdoom is in the position of maintaining his practice independently in a community where the primary hospital employs its own gastroenterologists. Since hospitals are permitted by federal law to require their employed physicians to refer to other hospital employed physicians, this places Dr. Makhdoom in a tenuous position of potentially losing his patient base to hospital-employed physicians. In 2014, Dr. Makhdoom learned that SIH employed physicians would be penalized for referring SIH patients to him for gastrointestinal services. It should not be lost on the CON Board that the hospital system is a competitor to Dr. Makhdoom as a health care provider and it is insupportable that this physician should be forced to work with a health system that will strip him of his patient-base over time based on their size and power in the community.

Finally, hospitals are not appropriate settings for most endoscopic procedures. Hospitals are too expensive for routine endoscopic procedures. In fact, hospitals that are more proactive in ensuring lower cost access to services in the community are investing in ASTCs for access to

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lower-cost endoscopy services for their communities. This is a payor mandate in some situations as we cited in our previous communications, e.g., United Healthcare.

b. Other ASTCs

Performing endoscopy procedures in a different ASTC will not allow Dr. Makhdoom to be on site at his practice location to supervise his physician extenders. As noted in our May 16, 2016 letter, the physician extenders play a vital role in enhancing access to much needed gastrointestinal services. The physician extenders primarily manage patient consultations and follow-up exams while Dr. Makhdoom performs endoscopies. Between endoscopy procedures, the physician extenders consult with Dr. Makhdoom, who will step in for more complex cases. By being physically present in the office, Dr. Makhdoom can collaborate with his physician extenders. If Dr. Makhdoom were off-site, communication would be much slower and complicate the collaborative process.

c. Direct Access

The direct access program and shifting referral patterns to freestanding endoscopy centers jeopardize Dr. Makhdoom's ability to perform endoscopic procedures in his office without an IDPH ASTC license. As discussed more fully in the CON Application, the ratio of surgical to non-surgical procedures will increase as more patients participate in the direct access program. The direct access program expedites and simplifies the process for patients receiving screening colonoscopies and other endoscopy services. Most patients, provided they are in good or stable health, can arrange for a colonoscopy without first having a face-to-face consultation with a gastroenterologist. This saves patients both time and money by eliminating avoidable physician visits.

3. Southern Illinois Healthcare

a. Size of the Endoscopy Center

SIH claims the size of the proposed endoscopy center is too small to comply with IDPH licensing standards. As stated in our letter dated April 7, 2016, the Applicants' architect has reviewed the space and confirmed there is sufficient space pursuant to IDPH licensure requirements to accommodate the two procedure rooms and seven recovery stations.

b. Patient Assistance Program

As discussed throughout the CON application and the submissions of additional information to the State Board, a primary purpose of the proposed endoscopy center is to

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improve access to gastrointestinal endoscopy procedures, specifically, colonoscopies. As such, the proposed endoscopy center will treat all patients, who are medically appropriate, regardless of ability to pay. As evidence of this commitment, Southern Illinois GI Specialists ("SIGIS") entered into an arrangement with Shawnee Health Service whereby it will provide free colonoscopy screenings to patients referred to SIGIS. See April 7, 2016 Letter. This arrangement is already in place and Dr. Makhdoom is accepting patients from Shawnee Health Service. This program will be implemented at the proposed Southern Illinois Gastrointestinal Endoscopy Center.

In addition to the free colonoscopy screenings, SIGIS provides reduced cost endoscopy procedures through its Colonoscopy Assist Program and Upper GI Endoscopy Assist Program. These programs are available to uninsured patients and charge an all-inclusive rate, which covers not only the endoscopic procedure, but the physician fee, sedation, polyp removal and pathology costs. In 2015, nearly 10% of the SIGIS' endoscopy patients received discounted care through the two assistance programs. As more patients become aware of this vital program these numbers are expected to increase. In fact, 15% of SIGIS' colonoscopy patients have been served through the Colonoscopy Assist Program in 2016.

Importantly, while SIH states its charges bear little relationship to the amount paid by an insurer or patient, it fails to note that for patients who must pay a 20% copay for an endoscopic procedure, the out-of-pocket cost of a \$10,000 colonoscopy is \$2,000 and cost prohibitive for many patients. Carbondale is a predominantly rural community, and many patients have insurance with high co-payments and deductibles. Without a high quality, low cost alternative to a hospital outpatient department, patients will either have to travel across the river to Missouri or go without this vital screening procedure. The proposed endoscopy center seeks to improve access to colorectal cancer screening by making it affordable to all patients living in Southern Illinois.

c. Global Billing

SIH alleges SIGIS charges a facility fee for endoscopies. This is not the case. HealthLink, Health Alliance and Blue Cross/Blue Shield each approached Dr. Makhdoom about lowering charges for colonoscopies. The insurers agreed to pay a flat fee for each procedure required for the colonoscopy (e.g., colonoscopy with polyp removal, colonoscopy with biopsy, colonoscopy control of bleeding, etc.) and provided the CPT codes, which Dr. Makhdoom used for billing these procedures. Importantly, at no time did Dr. Makhdoom bill a facility fee for endoscopy procedures performed in his office.

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d. Advertising as a Licensed Surgery Center

SIH claims that because SIGIS promotes itself as an “Office Based Surgery” program it is violating the ASTC regulations prohibiting an unlicensed facility to hold itself out to the public as a “surgery center” or a “center for surgery.” SIGIS has never held itself out as surgery center or a center for surgery. It is accredited by The Joint Commission for Office Based Surgery. Joint Commission accreditation demonstrates a provider’s commitment to safety and quality patient care. The patient assist program advertisement correctly states SIGIS is Joint Commission accredited for Office Based Surgery. SIGIS’ marketing materials do not promote SIGIS as anything other than an office-based surgery practice.

e. Utilization of Hospitals

SIH suggests the hospitals in the area are appropriate locations for routine endoscopic procedures. As discussed more fully above, hospitals are more costly; some payors will not reimburse providers for colonoscopies provided in a hospital outpatient department that are medically appropriate for an ASTC; and procedures performed outside of an ASTC does not allow Dr. Makhdoom to leverage his physician extenders.

Finally, SIH claims Dr. Makhdoom resigned his medical staff privileges at Carbondale Memorial Hospital and St. Joseph Memorial Hospital because he was unwilling to fulfill his medical staff requirements to take emergency room and afterhours calls. Dr. Makhdoom resigned his privileges due to several factors. First, it is important to note, that Dr. Makhdoom is the only independent gastroenterologist in Carbondale. In 2012, Carbondale Memorial Hospital and St. Joseph Memorial Hospital began to employ their own gastroenterologists, and currently have four employed gastroenterologists. As the hospitals employed more gastroenterologists, Dr. Makhdoom became concerned he would lose more block time at the hospitals. As noted above, in 2012, Dr. Makhdoom lost his Tuesday block time at Carbondale Memorial Hospital to accommodate the hospitals’ employed physicians. Second, the hospitals would not allow him to see his own patients during call coverage. Finally, the hospital would not allow him follow up on emergency patients he treated. Due to continuity of care and other issues, Dr. Makhdoom felt it was in the best interests of his patients to resign his privileges at the hospitals.



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Thank you for your assistance on this matter. If you have any questions or need any additional information regarding Southern Illinois Gastrointestinal Endoscopy Center, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne M. Cooper'.

Anne M. Cooper