



STATE OF ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD

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Illinois Health Facilities and Services Review Board Written Decision Whether to Defer E-004-19 Westlake Hospital, Melrose Park

Introduction

This written decision is being submitted to the Illinois Health Facilities and Services Review Board to comply with Section 12(11) of the Illinois Health Facilities Planning Act (“Act”) (20 ILCS 3960). This written decision was requested by counsel for the Village of Melrose Park. If this written decision is approved, it will be placed in the formal record of Permit #E-004-19 as required by the Act.

Background

On April 30, 2019, the Illinois Health Facilities and Services Review Board (“State Board”) voted against deferring exemption application #E-004-19 (“Application”), which was an application to discontinue Westlake Hospital (“Westlake”). In making its decision, the State Board considered 77 ILAC 1130, the Act and the documents contained in the Application’s project file, which included: the Application, additional information provided by the applicants, oral and written public hearing testimony, and written comments received by State Board staff. The State Board also considered the public participation statements and the applicants’ testimony at the April 30, 2019 State Board Meeting (“State Board Meeting”).

Application Chronology

The State Board received the Application on February 21, 2019. The applicants were Pipeline-Westlake Hospital, LLC and SRC Hospital Investments II, LLC. The State Board held a public hearing for the Application on March 11, 2019. At the public hearing, 541 individuals registered their attendance; one individual registered in support; 536 individuals registered in opposition; one individual registered neutral; and three individuals did not specify a position. In addition, 63 individuals registered as providing testimony. Three of these individuals registered in support and 60 individuals registered in opposition to the Application. A copy of the public hearing transcript is available on the State Board’s website.

The State Board received a copy of a lawsuit that the Village of Melrose Park had filed against the applicants as well as other named parties. The case is before the Circuit Court of Cook County, Case No. 2019CH03041. The State Board also received copies of other pleadings associated with the case. In the case, the judge issued a temporary restraining order preventing the closure of Westlake until May 1, 2019. The case was still pending at the time of the State Board Meeting.

State Board Meeting

More than 30 individuals provided public statements at the State Board Meeting during public participation, including counsel for the Village of Melrose Park, Ari Sharg, and the mayor of the Village, the honorable Ronald Serpico. A copy of the transcript will be available on the State Board's website.

The State Board's general counsel provided a statement at the State Board Meeting. She informed the State Board of 77 ILAC 1130.560(b)(2), which states that the "HFSRB will defer consideration of an application for exemption when the application is the subject of litigation until all litigation related to that application has been completed." She recommended deferral of the Application in light of the rule and pending litigation.

Counsel for the applicants urged the State Board not to defer consideration of the Application on the basis that the pending litigation was not related to the Application. Further, that the lawsuit is baseless because it is premised on the incorrect belief that the applicants defrauded the State Board and because the State Board cannot require a change of ownership applicant to retain services for any length of time. Counsel further argued that the Act required the State Board to approve the Application and that any regulatory interpretation that allows the lawsuit to prevent the State Board from considering the Application is inconsistent with the Illinois Health Facilities Planning Act which "trumps" the regulation.

Counsel also testified that the closure of Westlake is in the best interest of patient care due to low occupancy and continuing staff attrition. The co-president of Pipeline testified to the low occupancy levels at Westlake, that Westlake is operating at a financial deficit and that there is not a viable buyer for Westlake. The chief nursing officer for West Suburban Hospital and Westlake testified that staffing shortages began when the Application was filed and has worsened. She also testified that staff attrition led to concerns of an unsafe environment for patient care.

Applicable Law

20 ILCS 3960/6

(b) The State Board shall establish by regulation the procedures and requirements regarding issuance of exemptions. An exemption shall be approved when information required by the Board by rule is submitted. Projects eligible for an exemption, rather than a permit, include, but are not limited to, change of ownership of a health care facility, discontinuation of a category of service, and discontinuation of a health care facility, other than a health care facility maintained by the State or any agency or department thereof or a nursing home maintained by a county. For a change of ownership of a health care facility, the State Board shall provide by rule for an expedited process for obtaining an exemption in accordance with Section 8.5 of this Act.

77 ILAC 1130.525

- a) **Submission of Application for Exemption**
Prior to any person discontinuing a health care facility or category of service, the person shall submit an application for exemption to the HFSRB, submit the required application-processing fee (see Section 1130.230), and receive approval from HFSRB.
- b) **Application for Exemption**
The application for exemption is subject to approval under Section 1130.560, and shall include a written response addressing the review criteria contained in 77 Ill. Adm. Code 1110.130. The application shall be available for review on the premises of the health care facility.
- c) **Opportunity for Public Hearing**
Upon a finding that an application to close a health care facility is complete, the State Board shall publish a legal notice on 3 consecutive days in a newspaper of general circulation in the area or community to be affected and afford the public an opportunity to request a hearing. If the application is for a facility located in a Metropolitan Statistical Area, an additional legal notice shall be published in a newspaper of limited circulation, if one exists, in the area in which the facility is located. If the newspaper of limited circulation is published on a daily basis, the additional legal notice shall be published on 3 consecutive days. The legal notice shall also be posted on the Health Facilities and Services Review Board's web site and sent to the State Representative and State Senator of the district in which the health care facility is located. [20 ILCS 3960/8.5(a-3)]

77 ILAC 1130.560

- a) **Action by Chairman**
The Chairman, acting on behalf of HFSRB, shall review all applications for exemption and approve, deny, or refer the application or material change to HFSRB for review and action.
 - 1) The chairman shall act *on an exemption application for a change of ownership among related persons within 45 days after HFSRB staff deems the application complete, provided the application includes the requisite information. If the Board Chair has a conflict of interest or for other good cause, the Chair may request that the Board consider the application. [20 ILCS 3960/8.5(a)]*
 - 2) The Chair shall act upon an exemption application for the discontinuation of a health care facility, discontinuation of a category of service, or change of ownership that is not among related persons after Board staff finds that the

application is complete and includes the requested information. The Chair may refer the application to the Board.

b) Action by HFSRB

- 1) HFSRB shall evaluate each application for exemption referred by the Chairman and either issue an exemption or advise the applicant or exemption holder in writing that the application is denied and is not in conformance with exemption requirements. The number of affirmative votes for approval of an application for exemption is specified in the Act. HFSRB shall approve an application for exemption that it determines to be in compliance with the requirements. Exemptions will not be issued for projects that have failed to meet the applicable requirements of this Subpart.
- 2) HFSRB will defer consideration of an application for exemption when the application is the subject of litigation, until all litigation related to the application has been completed.

20 ILCS 3960/4

(i) Five members of the State Board shall constitute a quorum. The affirmative vote of 5 of the members of the State Board shall be necessary for any action requiring a vote to be taken by the State Board. A vacancy in the membership of the State Board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the State Board as provided by this Act.

State Board Decision

Four State Board members voted to defer consideration of the Application. Three State Board members voted against deferring consideration of the application.

Specifically, Member Hamos voted against deferral reasoning that Public Act 99-154 does not allow the Board to defer consideration of the Application. She stated that an interpretation that the State Board must defer an exemption application when there is pending litigation would subvert the intent of Public Act 99-154, would cede the State Board's authority to the courts and would lead to increased litigation. She reasoned that the national trend in health care is a decline in inpatient utilization at hospitals and a focus towards outpatient services. Member McGlasson voted against deferral based on the applicants' testimony. Member Gelder voted against deferral. He discussed that the medical practice has changed and stated "we [] make our votes based on what we think the law says and not on what's convenient or helpful to try to kind of, perhaps, kick a can down a road." He asked the applicants to work with the community towards

a collaborative effort to improve health care and look at what role Westlake's campus can play in that endeavor.

Member McNeil voted yes on the deferral "based on the testimony, transcripts, and the need to work out some issues." He stated that there is a difference between a business decision and a human decision and that Pipeline is making a business decision in closing Westlake. Member Demuzio voted for deferral. Member Murphy voted for deferral based on the interpretation provided by the State Board's general counsel. Member Hemme voted for deferral. She stated that she felt that the courts needed to review whether misrepresentations were made and asked the applicants if they would keep the Westlake building open and provide health services that meets the community's needs.

Conclusion

Pursuant to 20 ILCS 3960/4(i), "[t]he affirmative vote of 5 of the members of the State Board shall be necessary for any action requiring a vote to be taken by the State Board." Because there were fewer than 5 State Board members who voted to defer consideration of the Application, the Application was not deferred.