



# STATE OF ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD

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## Illinois Health Facilities and Services Review Board Written Decision 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 to approve exemption application #E-004-19 (“Application”), which was an application to discontinue Westlake Hospital (“Westlake”). In reaching its decision, the State Board considered the Act, 77 ILAC 1130 and the documents contained in the Application’s project file, which included: the Application, additional information provided by the applicants, written and oral statements made at the public hearing, 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 and supplemental information thereafter. The State Board held a public hearing for the Application on March 11, 2019. At the public hearing, 541 individuals registered their attendance for the public hearing: 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 transcript of the public hearing is available on the State Board’s website

Furthermore, the State Board received a number of letters and petitions in opposition to the Application.

On April 16, 2019, State Board staff published a State Board Staff Report for the Application. In the report, staff found that the applicants provided all the information required by the State Board.

## **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 made available on the State Board's website.

The State Board's general counsel made the following statement: "This is an exemption. And according to the statute, an exemption cannot be voted down, so please keep that in mind when issuing your vote. An exemption cannot be voted down if all the requirements are met, and according to the State Board staff report all requirements are met." State Board staff stated that all information required by the State Board has been provided by the Applications for the discontinuation.

## **Applicable Law**

### **20 ILCS 3960/6**

(a) An application for a permit or exemption shall be made to the State Board upon forms provided by the State Board. This application shall contain such information as the State Board deems necessary. The State Board shall not require an applicant to file a Letter of Intent before an application is filed. Such application shall include affirmative evidence on which the State Board or Chairman may make its decision on the approval or denial of the permit or exemption.

(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.

### **20 ILAC 1130.525 – Requirements for Exemptions Involving the Discontinuation of a Health Care Facility or Category of Service**

- 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 – HFSRB Action**

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**

Seven State Board members voted to approve the exemption. Member Demuzio stated that she hopes the applicants keeps the residents of Melrose Park in their hearts and minds as they move forward.

Member Gelder voted based on his understanding of the law as explained by the State Board's general counsel.

Member Hamos stated that the law is clear, "an exemption shall be approved when information required by the Board by rule is submitted." She encouraged Dr. Whitaker to not just hold the community in his heart, but to actively use his power and stature to move ahead to look at the community needs and the employer needs as well as accomplish hospital transformation.

Member Hemme stated, "the law requires me to vote in favor of this, but my heart is breaking for all the thousands of people who won't have access to care."

Member McGlasson voted based on the State Board staff report.

Member McNeil voted because of the law. He stated that he encouraged the applicants to deal with the community more effectively and that changes need to be made regardless because Westlake can't continue losing \$2 million a month. He encouraged the applicants to work with the community during the transition.

Member Murphy stated that she was voting based on successful completion of the State Board staff report.

## **Conclusion**

Pursuant to 20 ILCS 3960/6(b), “an exemption shall be approved when information required by the Board by rule is submitted..” Also, 77 ILAC 1130.560(b)(1) provides that, “HFSRB shall approve an application for exemption that it determines to be in compliance with the requirements.” Most State Board members voted yes based on the law and the fully positive State Board staff report. Because more than five State Board members voted in favor of the Application, the Application was approved. 20 ILCS 3960/4(i) (“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.” Seven State Board members voted to approve the exemption.)