



**ALGONQUIN ROAD SURGERY CENTER, LLC**  
Patient Centered. Extraordinary Care.

January 6, 2021

Via electronic delivery

Ms. Debra Savage  
Chair  
Illinois Health Facilities and Services Review Board  
525 West Jefferson Street  
2nd Floor  
Springfield, IL 62761

Re: OrthoIllinois Surgery Center Elgin, LLC ("OrthoIllinois")  
Project No. 20-040  
Letter of Opposition

Dear Ms. Savage:

Algonquin Road Surgery Center ("ARSC") respectfully requests that the Review Board deny the application of OrthoIllinois to establish a new surgery center in Elgin (the "Project"). The Project does not comply with your rules; there is substantial excess surgical capacity in the area, and the Project will have devastating impact on existing area providers and ARSC in particular.

Background of Algonquin Road Surgery Center

Algonquin Road Surgery Center ("ARSC") is a multi-specialty surgery center and two-thirds of the surgical hours performed here are orthopedic procedures. This surgery center is a joint venture among affiliates of Advocate Aurora Health, Northwestern Medicine and numerous area physicians. Several physicians that are part of the OrthoIllinois Project presently perform procedures in our facility. Our 2018 facility profile shows that our facility operated at 51% of target utilization. 6 of 9 orthopedic surgeons who are part of the OrthoIllinois Project presently perform 1,384 procedures at our facility. Their procedures account for 67% of the surgical hours at our facility. As discussed further below, the loss of the procedures from the new OrthoIllinois Project would be devastating to us.

**OrthoIllinois Project Goes Against Review Board Planning Objectives and Fails to Comply with Your Rules**

There is no need for an additional surgical center in this area. As the table below shows, existing surgical centers operate far below the Review Board's target of 80% utilization.

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| Name                                    | Address                 | City              | State | Zip   | # of Operating/ Procedure Rooms | Distance from Proposed facility (In miles) | 2018 Utilization % |
|---|-------------------------|-------------------|-------|-------|---------------------------------|--|--------------------|
| Advocate Sherman ASTC*                  | 1445 North Randall Road | Elgin             | IL    | 60123 | 4                               | 0.6  | 0%                 |
| Algonquin Road Surgery Center           | 2550 Algonquin Road     | Lake in the Hills | IL    | 60156 | 4                               | 7.4  | 51%                |
| Ashton Center for Day Surgery           | 1800 McDonough Road     | Hoffman Estates   | IL    | 60192 | 4                               | 9.2  | 23%                |
| Elgin Gastroenterology Endoscopy Center | 745 Fletcher Drive      | Elgin             | IL    | 60123 | 2                               | 2.7  | 0%                 |

\*Approved but not yet in operation

Project Fails to Meet Service Accessibility Criterion 1110.235(c)(6)

Section 1110.235(c)(6) of the Board's rules states that a proposed new ASTC facility must be necessary to improve access and that the applicant must document one of the following:

- A) there are no other surgery centers in the Geographic Service Area
  - B) all other ASTCs and hospitals are utilized at or above target utilization
  - C) the specific type of procedures are not available from existing hospitals or ASTCs;
- or
- D) the Project is a joint venture with a hospital and meets other requirements.

The proposed Project fails all four requirements. There are certainly other ASTCs and hospitals in the area. None of the existing ASTCs are even close to target utilization. ARSC, Ashton Center for Day Surgery and Advocate Sherman ASTC are all three approved to do orthopedic procedures. Finally, unlike Advocate Sherman Surgery Center, the Project is not a joint venture with the hospital. The Project meets none of the Board's requirements for Service Accessibility and must receive a negative finding.

Project has Significant Negative Impact on Other Facilities 1110.235(c)(7)(C)

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The Board's rules require that the applicant document that within 24 months after completion the project will not lower the utilization of other area providers below target utilization standards or will not lower, to a further, the utilization of other are facilities that are operating below utilization standards. 1110.235(c)(7)(C).

The table below shows where each of the referring physicians currently perform their procedures. All of the procedures to be performed at the proposed OrthoIllinois are procedure that will be taken from other area providers.

| Physicians   | Advocate Sherman | Amita St. Joseph | Northwestern Huntley | Algonquin Road ASTC |
|--------------|------------------|------------------|----------------------|---------------------|
| Mox          | 330              | 8                | 18                   | 0                   |
| Carlile      | 52               | 0                | 201                  | 0                   |
| Bohenekamp   | 64               | 0                | 514                  | 34                  |
| Kagalys      | 366              | 35               | 24                   | 0                   |
| Holtkamp     | 34               | 0                | 29                   | 597                 |
| Daniels      | 0                | 0                | 419                  | 84                  |
| Van Thiel    | 24               | 0                | 16                   | 96                  |
| Stanley      | 206              | 79               | 44                   | 140                 |
| Palmer*      | 190              | 400              | 0                    | 0                   |
| Izquierdo    | 250              | 0                | 10                   | 263                 |
| <b>Total</b> | <b>1,516</b>     | <b>522</b>       | <b>1,275</b>         | <b>1,214</b>        |

\* Dr. Palmer's referral letter indicates he performed 170 procedures at Valley Ambulatory Surgery Center.

It should be disturbing to the Review Board that the applicants blithe response to the obvious duplication of services is the following sentence from page 234 of the CON application. "As noted in previous sections, the licensed ASTCs in the geographic services are either operating at or near target utilization, or do not offer the same services that are proposed by this project." As Table 1 clearly shows, there are four approved ASTCs in the area. The 2018 reported utilization ranges

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from a high of our 51%, to 23% for Ashton to 0% for the other two facilities not reported as operating in 2018.

Further, ARSC's primary specialty is orthopedics, Ashton also performs these procedures and Advocate Sherman Surgery Center will perform these procedures. The applicants statement about other ASTCs utilizations is highly inaccurate and the Board should not let that statement go unchallenged.

As the prior table showed, ARSC operated at only 51% utilization in 2018. Of the total number of cases 6 of the 9 referring physicians performed, 1,214 of those cases were performed at ARSC. Any loss of cases from us means that the OrthoIllinois project fails this review criterion. Moreover, the significant loss of cases we would expect puts in question the continued viability of our facility.

Valid Referrals do not justify the Four Treatment Rooms Requested

Board Rules establish as a minimum the state standard for target utilization of 1,500 per room, which equals 80% utilization. 1100.640. For a four-room ASTC the target utilization would be 6,000 hours. The applicants project they will have a total of 4,867 hours in the first year of operation. This would justify 3.2 operating rooms. Page 230 of the CON application attempts to state that the target utilization is ">4500" hours, which is clearly incorrect. The rule is clear that 6,000 would be target occupancy. Worse, the CON application then attempts to state that 4,867 hours of procedures meets the state standard of 6,000 hours. We acknowledge that the Review Board staff has generally rounded up for purposes of calculating the number of treatment rooms, but that does not mean that an applicant can claim to reach target occupancy with only 4,867 hours.

Our understanding is that in its referral letters, OrthoIllinois has impermissibly counted referrals that had previously been committed to the Advocate Sherman Surgery Project. The Board's rules require as part of any referral letter the physician must "verify that the patient referrals have not been used to support another pending or approved CON application". We note that it appears that two physicians, Dr. Mox and Dr. Kazaglis submitted referral letters previously for the Advocate Sherman project and that consequently the referrals from those physicians should not be counted. If these duplicate referral were omitted, as the Board's rules require, the referrals would only justify 2.69 operating rooms. We refer you to an opposition letter dated December 30 for more detail.

The applicants fail to provide sufficient referrals to justify the four requested rooms for an additional reason. As the Board knows, the calculation for hours is the number of procedures multiplied by the average hours per procedure, plus clean up and set up time. The OrthoIllinois application provides referrals for 2,744 procedures with an estimated time for procedure of 1.78 hours to reach 4,867 hours. The basis for the 1.78 is not well explained except to state it was determined by "tracking procedures". While we may not know the average time for inpatient procedures, we know exactly the times for outpatient orthopedic procedures. You will see from our attached facility profile that these same surgeons averaged 1.21 hours per procedure at our facility. These will essentially be the same surgeons performing the same procedures. Using the

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proven average of 1.21 hours/procedure multiplied by 2,744 procedures equals only 3,320 hours—only enough to justify 2.2 operating rooms. When the referrals from the duplication physician letters are omitted, the application justifies only 1.8 operating rooms. Either the applicants inflated the surgery time in an attempt to justify the requested number of rooms, or the new facility will be almost 50% less efficient than our current facility.

Letter Providing Assurance of Achieving Target Occupancy Cannot be Valid

The Applicants provided the typical letter stating that the CEO of the Managing Member “hereby attest to the applicant’s full anticipation that, by the end of the second year following the proposed ambulatory surgical treatment center’s opening, the propose [sic] facility will operate at or in excess of the utilization standards identified in 77 Illinois Admin. Code 1110 Appendix B”. Because there is no such section of the rules, we assume that the letter meant to address the utilization standards in section 1100.640 discussed above, which is a minimum of 1,500 hours per operating room rule. In this case with a proposed four operating rooms, this would be 6,000 hours/year. While the Review Board may have become accustomed to unsubstantiated letters of assurances, here you have the applicants own projection proving this assurance wrong. On page 230 of the CON application, the applicants forecast that it will perform 5,137 hours of utilization in the second year of operation. 5,137 hours/year is far less than the State Standard of 6,000 hours. The Review Board must reject that Assurances letter that is disproven by the application itself.

Applicants have not Proven “Availability of Funds” Criterion

Review Board staff have been generally consistent in recent years that when a project relies on bank or debt financing to prove the availability of funds, the corresponding bank letter must be a “commitment” to lend. The bank financing letter contained at pages 265-266 makes clear that the term sheet is not a commitment. “This is an outline of a proposed structuring of your funding needs *and is not a commitment to lend.*” Application p. 266 (emphasis added). Consistent with State Board Reports on other projects, this Project should receive a negative finding on the Availability of Funds criterion.

Applicants do not Meet the Financial Ratios

A review of the Financial Viability ratios shows that from the applicants projections, the Project will not meet the financial ratios and consequently there must be a negative finding.

Applicants Have Not Complied with the Safety Net Impact Statement Requirements

When the General Assembly passed sweeping changes of the Illinois Health Facilities Planning Act in 2009, one of the significant changes made was to create a mechanism for assessing the impact of a project upon Safety Net Services. Public Act 96-0031 created a new Section 5.4 that requires certain projects, such as this OrthoIllinois Project to address the impact the proposed facility will have on other providers of safety net services.

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(c) As developed by the applicant, a Safety Net Impact

Statement shall describe all of the following:

(1) The project's material impact, if any, on essential safety net services in the community, to the extent that it is feasible for an applicant to have such knowledge.

(2) The project's impact on the ability of another provider or health care system to cross-subsidize safety net services, if reasonably known to the applicant.

(3) How the discontinuation of a facility or service might impact the remaining safety net providers in a given community, if reasonably known by the applicant.

Public Act 96-0031, Sec. 5.4.

A review of Attachment 37 of the CON Application, p. 275, contains none of the information required by statute above, and instead provides information about Rockford Orthopedic Associates d/b/a OrthoIllinois, a separate entity which is not a co-applicant (but which perhaps should be). That page is unresponsive to the statutory requirement that the applicant address the impact that it will have on the ability of safety net providers to provide these services. We have left it to other opponents to quantify the negative impact that the OrthoIllinois Project will have on their ability to provide safety net services. For purposes of this letter, we note that the Applicants have not addressed this requirement and that a negative finding be made on this review criterion.

Conclusion

We ask the Review Board to deny the OrthoIllinois application. The Project is the antithesis of what the Planning Act and Review Board should stand for. The Project adds almost \$18 million of health care spending when there is clearly not need. The Project results only personal gain with no societal or health system gain. The Project further undercuts the model of encouraging health care systems, even competitors, to work collaboratively on the delivery of health care. Algonquin Road Surgery Center stands ready to continue to work with these orthopedic physicians to continue to provide patient care through our existing surgery center.

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Very truly yours,

*R. Chatterji M.D.*

Raja Chatterji  
ARSC President

cc:

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