



April 13, 2021

**Via Email Delivery**

Courtney Avery, Administrator  
Health Facilities and Services Review Board  
525 West Jefferson Street, 2<sup>nd</sup> Floor  
Springfield, Illinois 62761  
[courtney.avery@illinois.gov](mailto:courtney.avery@illinois.gov)

**Project #20-040, OrthoIllinois Surgery Center, Elgin  
Comment on Addition of Necessary Party to Application**

Dear Ms. Avery:

Valley Ambulatory Surgery Center ("VASC") in St. Charles has previously submitted written opposition to Project #20-040, OrthoIllinois Surgery Center, Elgin, and wishes to add this additional comment in connection with the necessary parties to the permit application. As originally filed in October 2020, the sole applicant for the CON permit was a newly formed entity with no operating history and no assets. While we, and others in the community, have been regularly and continuously monitoring the project file on the website of the Health Facilities and Service Review Board, we feel that there has been a lack of full transparency with regard to what appears to have been the addition of Rockford Orthopedic Associates, Ltd, as a party five months after the filing of the application.

The addition of a party to an application requires notice of an opportunity for a public hearing under the Review Board's rules at 77 Ill. Adm. Code 1130.650. *At no time did the project file for Project #20-040 reflect that the requisite notice of opportunity for public hearing to a necessary party was being provided.* To the contrary, to this day, April 13, 2021, the only public hearing deadline referenced in the project file is the original opportunity for hearing issued when the application was filed last year, and the project file still shows the following: "Deadline to Request Public Hearing: 10/28/2020." If a second opportunity for public hearing was offered in February of this year, when the permit application was apparently modified to add a necessary party, that also should have been timely reflected in the project file on the website. The fact that the project file had never been updated to reflect a second opportunity for public hearing to add a necessary party to the project left VASC and other interested members of the public following this project by monitoring the project file with the confirmed impression that no such modification had been effectively made or opportunity for public hearing was being provided.

Perplexed by this, we scoured the project file and other locations of the Review Board's website in an attempt to determine what modification might have been made and notice given. We see there is a link to "Request for Modification 2/10/2021" but the document linked is merely a cover letter for a check to the Review Board with no description of what the modification was and



no mention that it was a modification to add a necessary party. Nor is there any reference in the letter to a Type A modification requiring notice for opportunity for public hearing, as when a necessary party is added. We also see a link to “Requested Information 2/5/2021” with a document from the applicant with the subject line stating, “Response to Request for Additional Information.” This apparently, is what was being treated as the Type A Modification to Add a Necessary Party, but that is not at all made clear by the link or subject line. Moreover, the Review Board’s rules make a very clear distinction between a response to Staff’s request for additional information and a modification to the application; they are in fact covered in separate provisions of the rules: responses to requests for additional information are described in Section 1130.635(a)(1) while requests for modifications are described in Section 1130.650, with information submitted in response to a modification referenced in Section 1130.635(a)(2). The fact that the project file link and document subject line reference *only* a response to an information request and *neither* reference a modification request or information submitted in response to a modification is again misleading to the public and did not provide any clear notice of a modification being made that would allow for an opportunity for public hearing.

Upon further search, we found elsewhere on the Review Board’s website, but *not* under this project file, a notice of opportunity for public hearing for this project referencing a modification and establishing a deadline to request the hearing by February 25, 2021. Given that the project file has a designated line item specifically for deadlines to request public hearings, we cannot understand why the project file never showed a February 2021 deadline, and has only ever showed a deadline of October 25, 2020 based on the original filing of the application. Nothing on the project file page advised the public of the opportunity for public hearing in February 2021 based on a modification of the permit application to add a necessary party. Nothing on the project file page advises the public that important information on the project, such as opportunity for public hearing, can *only* be found in another section of the Board’s website.

VASC, and we believe other members of the community, were not aware of this Type A modification or opportunity for public hearing, and we very respectfully submit that the lack of clear information about the modification, and complete absence of any notice of opportunity for public hearing on the Review Board’s project file page for this project largely contributed to this lack of accurate and updated information about the project.

This is not a mere technicality or “harmless error.” It directly affects the community’s opportunity to be heard and to participate in the CON process. VASC, and others in the community, have been particularly concerned about this project because of its dual adverse effects on the utilization of existing providers and on institutional Safety Net providers which has caused especial consternation among the public and their elected representatives. When something as significant as a Type A modification to add a Necessary Party occurs, *and no notice of that appears on the project file web page while that page continues to report the only opportunity for public hearing expired last October*, that impairs substantive rights of affected members of the community and public at large. Concerns raised about the parties to this application were significant. That a necessary party was apparently added to the application does not fully address those concerns given the lack of full transparency in the process by which that party was added. To be clear, VASC would have requested a public hearing had the project file for Project #20-040

notified that an opportunity for public was available in February 2021 and had not already expired months earlier in October 2020.

Sincerely,

A handwritten signature in black ink that reads "Lauren Blanchard". The signature is written in a cursive style with a large, prominent initial "L".

Lauren Blanchard, Administrator  
Valley Ambulatory Surgery Center