



Illinois State Senate

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HEALTH FACILITIES &
SERVICES REVIEW BOARD

July 2, 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**
Project No. 20-040 / Letter of Opposition

Dear Ms. Savage:

Each of our districts is served by the hospitals that are adversely impacted by this Project, and we appreciate the opportunity to comment on this matter of importance to our respective constituents in the greater Elgin area. After review of the CON application, together with key elements of the public comment and applicant testimony offered to the Review Board in advance of your "Intent to Deny," we respectfully share our reasons for urging denial of this Project.

Review Board Process Afforded Little
Meaningful Opportunity to Rebut Applicant's Assertions

The May 4, 2021 Review Board meeting demonstrated the inherent limitations that public comment speakers – all appearing prior to the applicant's formal presentation, and each limited to no more than two minutes – face when contesting material factual assertions by an applicant. In contrast to legislative hearings before the Illinois General Assembly, where opposition testimony follows proponent testimony, and where witnesses on all sides may be questioned, applicants before the Review Board enjoy a distinct advantage. Their formal presentations may include important factual assertions, without any possibility of challenge from an opponent, even when those assertions may be misleading or plainly wrong. This procedural dynamic is particularly concerning when, as in this proceeding, applicants present new information for the first time in oral testimony. We respectfully ask that you carefully consider what appear to be misrepresentations of fact and misleading assertions by the applicants, in addition to the deficiencies identified by your staff.

Surgical Logs Negate Argument of Insufficient Block Time

During the May hearing, several physician investors argued that the Project should be approved because "I often deal with issues related to a lack of block time at my hospital surgery suite, and I face that same issue in other hospitals." (See Transcript, p. 42). We have two hospitals in Elgin: one that operates at only 32% of target utilization (making it hard to image a lack of availability); and the other that operates at or slightly above target utilization (the level at which your regulations state a hospital is supposed to operate). All OrthoIllinois physicians at Advocate Sherman have "block time." We have been informed that, overall, the OrthoIllinois physicians at Advocate Sherman use only 62% of the block time they are allocated – meaning they leave almost 40% of their prearranged block time unused. Here is the data:

<i>From Jan to May 2021</i>	% Block Utilization	Avail Min	In Block Min	Out Block Min	Released Min	Unused Min	In Block Cases
OrthoIllinois Physicians	62%	62,651	39,083	12,207	4,999	23,568	402

Proposed Project Provides Little or No Indigent Care

As State Senators, we devote considerable energy to health care and Medicaid issues. Despite the applicants' oral representations of substantial "public pay" patient volume, we continue to be concerned over this Project's lack of commitment to providing Medicaid and charity care for the indigent, and the resulting adverse impact on our two hospitals – especially with the recent expansion of Medicaid coverage in Illinois to undocumented seniors, which will significantly impact Elgin and neighboring Carpentersville given their majority Latino population mix. To begin, there is the factually incorrect and concerning representation that "Ambulatory Treatment Centers are not providers of safety net services" on page 275 of the CON application. Then there is the fact that the OrthoIllinois facility in Rockford does only 0.4% Medicaid and \$0 of charity care, as officially reported to the Review Board. That compares to the following payer source revenues at the two Elgin hospitals:

By Percentage of Revenue

<u>Revenue Source</u>	<u>Amita St. Joseph</u>	<u>Advocate Sherman</u>	<u>OrthoIllinois Rockford</u>
Medicare	48.9%	41.3%	11.8%
Medicaid	21.6%	7.1%	0.4%
Private Insurance	40.5%	50.9%	81.1%
Private Pay	(11.0%)	0.2%	6.7%
Charity Care	2.5%	3.3%	0.0%

At the May hearing, we feel that the applicants misleadingly suggested that they will effectively serve as a "safety net provider" because they will accept Medicare – an assertion that is troubling, and even offensive. *Medicare is not indigent care.* Medicare is the norm for patients over 65. Many of our respective constituents fall in the Medicare category. While Medicare reimbursement rates may not be as high as some private insurance reimbursement, they are still relatively generous and certainly far greater than those offered through Medicaid. It troubles us that the applicants seem to have played misleading word games, on a material point, during their oral testimony.

As a matter of public policy, facilities that merit recognition and reward are those that actually bear the brunt of non- or under-compensated care. Medicaid and charity care constitute bona fide indigent care, and real "safety net services." Even with respect to the relatively generous Medicare services that applicants tout, both of our hospitals in Elgin provide considerably more Medicare than does the OrthoIllinois' facility in Rockford.

Given the complete facts about payer mix, it is perhaps not surprising that the applicants declined to provide the projected payer source allocation as normally *required* by the Review Board application. We hope that the Review Board will compel this disclosure.

OrthoIllinois Projects 24% Profit Margin

At the May hearing, the applicants introduced considerable new information for the first time. We have been advised that this has not been permissible in the past because new information deprives the Review Board staff and interested parties any opportunity to vet the information. Nonetheless, the applicants spent considerable time

discussing the “profits” earned by the non-profit Advocate system. (Transcript p. 24-25, 107-1101). They avoided discussing the more directly relevant percentages below:

Financial Margins

<u>Advocate Aurora Health First Quarter 2021</u>	<u>OrthoIllinois Projected</u>
1.6%	24%

While the Advocate system operated at a modest 1.6% margin, Advocate Sherman last year operated at a multi-million dollar *loss* – rendering \$55 million in uncompensated care, and making valuable community investments in relation to trauma services, obstetrics care for women, breast cancer prevention and education programs, and more. Contrast that with the projected operating margins for OrthoIllinois of 24%. OrthoIllinois’ profit margin would be 15 times the operating margin for the Advocate system.

Surgical Complication Rates

Finally, at the May hearing, applicants asserted that patients at Advocate Sherman have a higher risk of a complication than those at OrthoIllinois. Specifically, applicants stated that OrthoIllinois (Rockford) had a 1.0% surgical complication rate, although it provided no evidence of this rate, and that Advocate Sherman had a 2.4% complication rate. They continued with this dramatic statement: “That would be ten patients that you could potentially avoid having a catastrophic, life-altering complication by shifting those surgeries.” (Transcript p. 115). This new information had not been filed in advance for staff or others to review.

We are advised that this assertion is simply wrong. First, hospitals see more complex cases, as well as patients with greater co-morbidities and health risks, than do surgery centers – making the assertion an “apples to oranges” comparison at best. Further, when reviewing what the applicants have represented are the five most common procedures to be performed at their proposed new surgery center, Advocate Sherman could not find a *single* instance of a complication. Regrettably, this “complications” misinformation was cited by one Board member as his reason for voting for the Project.

Conclusion

We appreciate your consideration of our opposition, and our concerns over what appear to have been incorrect or misleading factual assertions, as you evaluate this Project following the initial “Intent to Deny.” Please allow our hospitals to regain their footing post-COVID without adding unneeded and duplicative health care capacity and services.

Respectfully submitted,



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Illinois State Senator
22nd District



Donald P. DeWitte
Illinois State Senator
33rd District



Karina Villa
Illinois State Senator
25th District