

#20-040-Comment on State Board Report



Carol Rauschenberger
Elgin City Councilperson

July 17, 2021

Debra Savage, Chair
c/o Courtney Avery, Administrator
Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761
courtney.avery@illinois.gov

Re: Comments on Staff Report
Project #20-040, OrthoIllinois Surgery Center, Elgin

Dear Madam Chair:

I appreciate the opportunity to review and comment to the State Board Report for the Project referenced above.

As you know, numerous people have written letters in opposition to this Project and I realize that the State Board Report cannot summarize all of them. I recognize that all letters are important; however, I believe that when our three Senators from Elgin come together in a bipartisan fashion to send a substantive letter of opposition, that it would be beneficial for Review Board members to have that opposition be particularly noted in the State Board Report. Those three Senators represent approximately 600,000 constituents in this area. I believe they know the health care needs of their district and their assessment of what is needed should be given value. I feel that the same deference should be shown to State Representative for the District and to Elgin City Council members who are all elected citywide.

Attached are those letters that I hope would be highlighted or reflected in the State Board Report.

Respectfully,



Carol Rauschenberger
Elgin City Councilperson

#20-040-Comment on State Board Report



Illinois State Senate

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:

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From Jan to May 2021	% 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:

<u>Revenue Source</u>	<u>By Percentage of Revenue</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

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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:

<u>Financial Margins</u>	
<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.

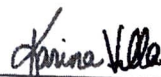
Respectfully submitted,



Cristina Castro
Illinois State Senator
22nd District



Donald P. DeWitte
Illinois State Senator
33rd District



Karina Villa
Illinois State Senator
25th District

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ILLINOIS HOUSE OF REPRESENTATIVES



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282-S STRATTON BUILDING
SPRINGFIELD, ILLINOIS 62706
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Suzanne Ness
STATE REPRESENTATIVE
66th DISTRICT

July 2, 2021

RECEIVED

JUL 07 2021

HEALTH FACILITIES &
SERVICES REVIEW BOARD

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

RE: Orthollinois Surgery Center Elgin, LLC Project No. 20-040, Letter of Opposition

Dear Ms. Savage,

I write to you now as I remain profoundly concerned with the application submitted by Orthollinois to build an ambulatory surgical center (ASC) in Elgin, and the applicant's supplementary materials submitted for this second hearing did little to change my opposition.

The applicants have failed to provide sufficient data to support the need for additional surgical space. By the Illinois Health Facilities and Services Review Board's own rules (Section 1100.640), 80% operating room utilization is target utilization. Pre-pandemic 2019 data shows that a number of high-quality facilities in the region are operating way below that threshold. For example, AMITA Health Saint Joseph hospital in Elgin is operating at 32% capacity, Valley ASC is operating at 37% capacity; Fox Valley ASC and additional ASCs in the area are operating at less than 60% capacity. There is no demonstrated need based on the evidence presented to me.

The applicants have also failed to provide firm written commitments to serve the economically underprivileged patients of my diverse district. In the last hearing, they verbally committed to "40% government pay." That was a curious way of positioning their commitment to serve my underprivileged constituents by claiming that Medicare is "government pay." Medicare reimburses quite well for orthopedic procedures. Looking at the Orthollinois ASC in Rockford, less than 2% of Orthollinois' patients are covered by Medicaid, and they serve no charity care patients at all. None.

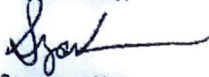
As a small business owner myself, I understand why Orthollinois would want to establish a new surgery center in our vibrant community. However, we must continue to be careful as we allow

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for-profit entities to enter the health care space to the potential detriment of our health care safety net, especially when their entry into the market would equate to a duplication of services and have no material benefit to the economically underprivileged.

Thank you for your intent to deny and your further consideration at the upcoming hearing. Please feel free to reach out if you have any questions.

Respectfully,



Suzanne Ness

Illinois House of Representatives

66th House District

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Elgin City Hall
150 Dexter Court
Elgin, IL 60120

Corey Dixon, MPA
Carol Rauschenberger, MBA
Elgin City Councilpersons

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JUL 07 2021

HEALTH FACILITIES &
SERVICES REVIEW BOARD

July 5, 2021

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

Re: **OrthoIllinois Surgery Center Elgin
Project No. 20-040, Letter of Opposition**

Dear Ms. Savage:

We jointly submit this letter to reaffirm our continued opposition to the above-referenced OrthoIllinois' CON application in unity with the many locally elected officials and prominent community leaders who have spoken out against it. As city-wide elected officials in Elgin, we can attest that community sentiment does not favor this Project, which: (a) represents an unnecessary duplication of services; (b) fails to meet any of the criteria for establishing a new ASIC; and (c) will adversely impact three area hospitals that provide the sort of safety net services that the applicants have not and will not render. The net effect on Elgin residents will be negative.

We join our local State Senators in respectfully asking that the Review Board enforce its regulations that require applicants to disclose a project's revenues by payer source, and subject these applicants' claims about substantial "public pay" and "Medicaid/Medicare" patient volumes to the close scrutiny they deserve. Misleading rhetoric should not be rewarded.

In its "additional information" letter of June 8, 2021, the applicants assert: "The Applicants have documented both significant community and patient support for their project." This assertion does not reflect the reality on the ground in Elgin. Even a cursory review of the online project file will confirm that community sentiment runs against this CON application. As locally elected officials with a pulse on the community, we hope you will appropriately weigh our observations in this regard. We also hope you will reject this Project No. 20-040.

Very truly yours,

Corey Dixon
Elgin City Councilmember

Carol Rauschenberger
Elgin City Councilmember

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July 7th, 2021

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

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HEALTH FACILITIES &
SERVICES REVIEW BOARD

RE: OrthoIllinois Surgery Center Elgin, LLC

Project# 20-040, Letter of Opposition

Chairwoman Savage,

My name is Dustin Good and I was recently elected to the Elgin City Council to serve as an advocate for this community. I was born in the old Sherman Hospital, graduated from U-46, went to Elgin Community College—I grew up here. My civic involvement has included serving on the Elgin Strategic Plan Advisory Committee and the Downtown Neighborhood Association. And, in everything I do, my ethos is community-first always.

In reviewing the issue of this proposed OrthoIllinois ambulatory surgery center, I am concerned that this project would not drive much community benefit—especially for those who are uninsured, undocumented, and in need of care. As you may know, Elgin has a thriving and growing Latine community, of which my wife Stephanie Good-Salas is a part. To ensure that everyone can lead long, healthy, happy lives, we need to make sure that health care providers in the region have a commitment to inclusive care.

In looking at the application, it looks like the applicant does not have a strong history of being payer agnostic.

While serving 2% Medicaid and zero charity care patients may be acceptable to some, that is not acceptable to me when we have high-quality orthopedic providers in the community already with a demonstrated commitment to serve everyone and ample space to accommodate patient volumes.

Respectfully,

Dustin R. Good

Dustin R. Good

Elgin City Counsel