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November 24, 2021

VIA E-MAIL

Courtney Avery
Board Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

Re: OrthoIllinois Surgery Center of Elgin, Project #20-040

Dear Ms. Avery:

We represent OrthoIllinois Surgery Center of Elgin, LLC and OrthoIllinois in regards to Project #20-040 for the OrthoIllinois Surgery Center of Elgin. On September 9, 2021 the Board received correspondence from Barnes & Thornburg (“Barnes”) alleging that Benesch Friedlander Coplan & Aronoff LLP submitted written comments to the Board that constituted *ex parte* communication. The basis for this allegation is that written comments submitted in response to the State Board Staff Report on September 6, 2021 went beyond the scope of addressing and correcting factual inaccuracies in the staff report. To ensure the record is clear that no *ex parte* communication occurred, please consider the following.

HFSRB regulations, 77 Ill. Admin. Code 1130.140 defines “*Ex parte* Communication” to mean “a communication between a person who is not a State Board member or employee that reflects on the substance of a formally filed State Board proceeding and that takes place outside the record of the proceeding.” See also 20 ILCS 3960/4.2. To be clear - no such communication took place. These comments did not take place outside of the record of the proceeding. The comments were submitted to the HFSRB in the prescribed manner, consistent with the established process and timing described in 77 Ill. Admin. Code 1130.635(c), and were made a part of the record by HFSRB staff. There is no regulatory basis by which the comments made in the established process and included in the record could be considered *ex parte*, nor should any implication of such conduct be allowed to linger.

Even if the comments were somehow considered to have been *ex parte* based upon the timing and the substance of the comments, any theoretical harm was deemed moot when the project was deferred for consideration at a meeting after the September 14, 2021 meeting. Upon its being rescheduled, the public comment period reopened and any written comment may be submitted up to 20 days prior to the consideration of a project. See 77 Ill. Admin. Code 1130.920(a)(6) (“HFSRB staff must receive all public comments regarding an application no

November 24, 2021

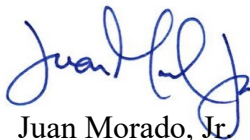
Page 2

later than 20 days prior to the tentatively scheduled consideration of the application. If the consideration date is extended, the public comment period will also be extended. If, subsequent to HFSRB consideration of an application, a final decision is not made (application is deferred or is issued an Intent to Deny), the public comment period shall be extended to the 20 days prior to the next consideration.”). Nevertheless, in an abundance of caution, the comments are being resubmitted along with this correspondence, thereby curing even the fictional allegation of wrongdoing that has been presented.

In an abundance of caution and since those opposing this project have done so with such aggression and shifting accounts of factual and legal justifications, it seemed most prudent to submit this response to keep the record clear should litigation be the ultimate design of those opposing this project. Should any questions exist from the HFSRB or its staff, the Applicants remain prepared to address those concerns. Otherwise, we will consider this matter resolved. If you have any questions, please contact me at 312-212-4967 or at jmorado@beneschlaw.com.

Very truly yours,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP



Juan Morado, Jr

September 6, 2021

Courtney Avery
Board Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

Re: Letter in Response to State Board Staff Report- OrthoIllinois Surgery Center of Elgin, LLC

Dear Ms. Avery:

We are writing on behalf of OrthoIllinois Surgery Center of Elgin, LLC, in regards to its Certificate of Need application to establish a multi-specialty Ambulatory Surgical Treatment Center ("ASTC") in Elgin, Illinois. This submission is in response to the recently published State Board Staff Report ("SBSR") posted by Illinois Health Facilities and Service Review Board ("HFSRB") staff for the September 14, 2021 meeting. We thank staff for its time spent reviewing the application and preparing the report. However, there are certain clarifications that we believe are warranted to ensure the Board has a fulsome and accurate understanding of the circumstances relevant to this proposed project.

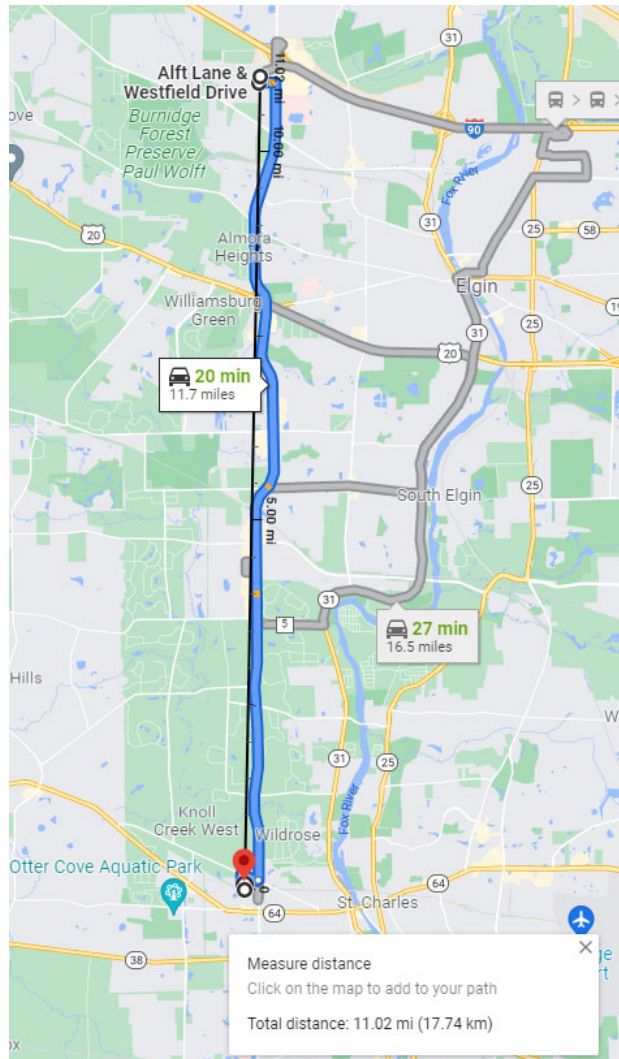
On page 3 of the SBSR there is a description of the estimated facility impact if the proposed facility is approved, and the SBSR goes on to cite that the application received a finding of nonconformance when it came to unnecessary duplication of service and impact on other providers. We do not disagree with the Board findings but would consider it imperative to offer additional context as to why additional capacity is desperately needed in the community. On pages 9-10 of the SBSR, HFSRB staff has included comments from Advocate Sherman Hospital alleging that the loss of surgical volume to another ASC in the Elgin area will have negative impact on its facility. The SBSR also contains attachments provided by the Applicants and a transcript of the testimony presented at a previous Board meeting where on multiple occasions the issues of access in the community were repeatedly raised, specifically concerns regarding a lack of sufficient existing capacity, unnecessary obstacles to providing care, and the need for additional access to services.

Additionally, it cannot be ignored that the last three Chairs of the Surgery Department at Advocate Sherman Hospital ***all support this project***. These surgeons have each stated the same thing, that there is no available block time at Sherman Hospital. This Board also heard testimony

regarding issues with available block time at both Northwestern Huntley Hospital and Amita Saint Joseph (who is not opposing this project). Despite this, at every opportunity Advocate Sherman has stated that comments regarding facility capacity were false and that ample capacity was available. While Applicants have continued to present verifiable facts and sworn testimony to challenge Advocate Sherman's statements, such as the sworn testimony of Dr. Stanley who describes a culture of overbooking operating rooms at Advocate Sherman to keep up with demand. Any question of the truth of the circumstances has been put to rest because, in the past week, the Applicant's comments have all been revealed to be true as verified by the media and Advocate Sherman leadership. This information must be provided to the Board for them to appropriately evaluate this project.

Since August 31, 2021 the Advocate Sherman Hospital has had to place its emergency room on bypass status and elective surgeries (including the exact type of surgeries that would be performed at the proposed facility) have been cancelled and are being rescheduled. It was reported by the Daily Herald that this shutdown would last almost three weeks due to a lack of anesthesia providers. The article quotes Dr. Phillip Lamruschi who called the shutdown "an absolute disgrace" and described performing "most of his procedures at his own surgery center because it's cheaper for patients." We are also enclosing copies of daily emails sent from Advocate Sherman CEO Sheri DeShazo to area providers that describes the hospital's bypass status and the system's plan to send patients over 30 minutes away to Advocate Good Shepherd Hospital to accommodate emergency surgeries. However, as described to the Board during the last presentation, these capacity issues are long-standing. If and when the facility is able to obtain anesthesia coverage to allow for elective procedures to be resumed, the lack of operating room capacity will remain.

The SBSR also includes an additional ASTC in its analysis of area facility utilization that is not within the 10-mile GSA. As noted in the SBSR, because the proposed facility is located within in Kane County the staff is required to determine what the utilization is of area facilities within a 10-mile radius of the applicant facility. The proposed facility will be located on Alft Lane and Westfield Drive in Elgin, Illinois. Staff included in the SBSR Valley Ambulatory Surgery Center, which is not located within the 10-mile GSA. We have included an image below from Google Maps that uses a straight line measurement from the proposed facility to the existing facility and shows the distance between the two sites is over 11 miles.



The SBSR also cites language from the application that ASTCs are the same types of providers of safety net services that hospitals are because all procedures performed at an ASTC is elective. This has been misconstrued by opponents to allege that OrthoIllinois will not provide services to patients who have Illinois Medicaid as their insurance. The physician leaders of OrthoIllinois stated under oath while appearing before the Board, that OrthoIllinois physicians are the providers of safety net orthopedic care at the hospital and in the community, and they will continue to be if this project is approved. The OrthoIllinois physicians will accept patients with Illinois Medicaid at the proposed facility as they always have (unlike area ASTCs) at their physician practice locations throughout the state.

September 6, 2021

Page 4

We look forward to re-appearing before the Board to discuss how this project provides a more equitable approach to increasing access to care for the community and lowers costs for patients while improving outcomes. If you have any questions or need any additional information regarding the project, please feel free to contact me via phone at 312-212-4967 or via email at JMorado@beneschlaw.com

Very truly yours,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP

A handwritten signature in black ink, appearing to read "Juan Morado Jr.", with a stylized flourish at the end.

Juan Morado Jr.

Advocate Sherman Hospital rescheduling elective surgeries due to a lack of anesthesia providers



Advocate Sherman Hospital in Elgin is putting a hold on elective surgeries for almost three weeks due to a lack of anesthesia providers. (*Brian Hill | Staff Photographer*)

**Rick West**

Updated

8/31/2021 7:42 AM

Advocate Sherman Hospital in Elgin is putting a hold on elective surgeries for almost three weeks due to a lack of anesthesia providers.

In a statement, parent company Advocate Aurora Health didn't address the reason for the shortage in anesthesia providers, but did say they "will continue to provide care for urgent and emergent situations, and it is critical that patients seek care when needed."

The statement said labor and delivery services will continue without interruption and that they are "rescheduling noncritical or elective procedures to other Advocate Aurora Health locations until Sept. 20 at the latest due to a shortage of anesthesia providers."

The company declined to provide additional details.

Dr. Sanjay Sutaria said his company, United Anesthesia Associates in Elgin, had been working with Sherman Hospital for 30 years to provide anesthesia services. He said they had been negotiating with Advocate for more than a year and half on a contract before the hospital chain decided to go with another provider.

"It stings, because we did the best job we could," said Sutaria, who added that his company had the support of doctors at the hospital. "It was purely a corporate decision that had no consideration for the community of Elgin."

According to several doctors who contacted the Daily Herald, the Elgin hospital notified them that they would need to reschedule or find a new location for noncritical procedures starting Wednesday.

"I just think it's an absolute disgrace," said Dr. Philip Lambruschi of Valley Plastic Surgery Center in West

Dundee.

Lambruschi, an independent plastic surgeon who has been on staff at Sherman Hospital for 37 years, said he had one procedure scheduled in that time window. He performs most of his procedures at his own surgery center because it's cheaper for patients.

"Everybody was worried about big government taking over medicine and now big business has taken over medicine," Lambruschi said.

"You can vote out the government, but you can't vote out big business."

CURRENT STATUS

We are currently on bypass status until September 2, 2021 at 7:00am.

UPDATES: 9/1/21

Again, we realize the significant impact this has on our patients and providers. In addition to our efforts to help safely and successfully navigate through this transition, see the following updates below:

- We anticipate a progressive increase in our anesthesia coverage of non-emergent cases over the coming weeks.
- We are currently evaluating the holiday weekend coverage and will provide a timely update
- Expedited Temporary Privilege assistance at Advocate Good Shepherd Hospital to accommodate surgeries
- Daily 9:30am Anesthesia Planning Huddles including key clinical team members from both Sherman and Good Shepherd
- Daily Surgical Case Planning Huddles which includes perioperative leadership
- All urgent/emergent issues should be routed to the nursing supervisor via 67-6310. All non-urgent issues should be routed to the incident command hotline # or the email address. Transition Assistance Contact Information:
 - Phone line: 224-783-1441
 - Email: SHER-INCIDENTRESPONSE@AAH.ORG

We are committed to the health and safety of our patients and will do everything to ensure a smooth transition to TeamHealth despite these difficult circumstances.

Respectfully,

Sheri & Justin

Sheri De Shazo, RN MBA MHA, LSS-GBc, FACHE

President

Advocate Sherman Hospital
1425 N. Randall Road
Elgin, IL 60123
O: 224.783.8002(Internal: 67-8002)
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Sheri.deshazo@aah.org

Justin R. Macariola-Coad, MD

Vice President & Chief Medical Officer

Advocate Sherman Hospital

1425 N. Randall Rd.

Elgin, IL 60123

O: 224.783.3934 (internal: 67-3934)





***** On Behalf of Sheri DeShazo, President and Dr Justin Macariola-Coad Chief Medical Officer**

of Advocate Sherman Hospital

WEEKEND STATUS:

We are currently on bypass until Monday, September 6, 2021 at 7:00am.

UPCOMING ANESTHESIA COVERAGE:

- **Friday 9/3:** 1 Anesthesiologist
- **Saturday 9/4:** 1 Anesthesiologist
- **Sunday 9/5:** 1 Anesthesiologist
- **Monday 9/6:** 2 Anesthesiologist; 1 CRNA

UPDATES: 9/3/21

Again, we realize the significant impact this has on our patients and providers. In addition to our efforts to help safely and successfully navigate through this transition, see the following updates below:

- While on bypass due to limited anesthesia coverage, we are accepting BLS ambulance calls as well medical transfers.
- We anticipate a progressive increase in our anesthesia coverage of non-emergent cases over the coming weeks.
- We are currently evaluating the holiday weekend coverage and will provide a timely update
- Expedited Temporary Privilege assistance at Advocate Good Shepherd Hospital to accommodate surgeries
- Daily 9:30am Anesthesia Planning Huddles including key clinical team members from both Sherman and Good Shepherd
- Daily Surgical Case Planning Huddles which includes perioperative leadership
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We are committed to the health and safety of our patients and will do everything to ensure a smooth transition to TeamHealth despite these difficult circumstances.

Respectfully,

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Sheri De Shazo, RN MBA MHA, LSS-GBc, FACHE

President

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Fri, Sep 3, 2021 at 3:52 PM