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April 25, 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: Response to State Board Staff Report 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. Please accept this letter as the applicant's response to the State Board Staff Report ("SBSR"). We appreciate staff's efforts in reviewing the application and preparing the report. However, we believe there are multiple issues that should be corrected in the report.

There were multiple findings of non-compliance that result from staff removing referrals submitted by the applicant for this project. We believe the removal of the 273 projected patient referrals from this project was in error, and the justification for the removal is unfounded. The 274 referrals that were removed from the project were from two OrthoIllinois physicians, Drs. Mox and Kazaglis. Dr. Mox submitted a letter for this project committing to make 170 referrals to the proposed ASTC and Dr. Kazaglis committed to making 297 referrals to the proposed ASTC. Staff correctly notes that both physicians submitted referral letters for another ASTC project almost five years ago that has never been constructed. In those letters, Dr. Mox committed to referring 116 patients and Dr. Kazaglis committed to referring 157 patients, and projections were based on patient date from 2015. Whether or not those doctors should still be held to abide by those prior referrals for a facility that has not progressed in the last three years is questionable but, fortunately, is also irrelevant for this project.

In the five years since those letters were written, Dr. Mox and Kazaglis have both seen an increase in patient volume and historical procedures performed as evidenced by the referral letters submitted for this project. Dr. Kazaglis saw an increase of 56% percent from 2015 to 2019, and Dr. Mox saw an even larger increase of 61% from 2015-2019. The SBSR also notices that the planning area is projected to see a 11% increase in overall population. The patient volume for the both Dr. Mox and Dr. Kazaglis and the entire OrthoIllinois practice is expected to

continue to grow. Based on Dr. Mox’s historical outpatient surgical data he can meet **both** his commitment to provide 157 referrals to the Advocate Sherman ASTC (if it is ever constructed) and can **also** refer 170 referrals to the proposed project. Dr. Kazaglis is in similar position to meet **both** commitments, although we acknowledge that 29 referrals could be considered as “double counted” (assuming the Advocate Sherman ASTC is ever constructed) and thus understand that 29 of his referrals should be removed. There is no precedent or guidance by the Board’s rules or statute that indicate that all of these referrals should be removed.

|                 | 2015 Historical Referrals | 2019 Historical Referrals | Total Increase and Percentage              | 2016 Proposed Referrals | 2021 Proposed Referrals | How Many Referrals Should be Removed? |
|-----------------|---------------------------|---------------------------|--|-------------------------|-------------------------|---------------------------------------|
| <b>Kazaglis</b> | 189                       | 425                       | 236 additional patients<br>or 56% increase | 157                     | 297                     | 29                                    |
| <b>Mox</b>      | 143                       | 356                       | 143 additional patients<br>or 61% increase | 116                     | 170                     | 0                                     |

In addition to removing the proposed referrals from Dr. Mox and Kazaglis, Board Staff also undercounted the number of proposed referrals from Dr. John Daniels. In an updated referral letter submitted to Board Staff on February 24, 2021, Dr. Daniels increased his proposed referrals from 150 to 180. The SBSR does not reflect this increase and we would request that Board Staff update its calculation. This is particularly important because it notably impacts the negative findings contains within the SBSR.

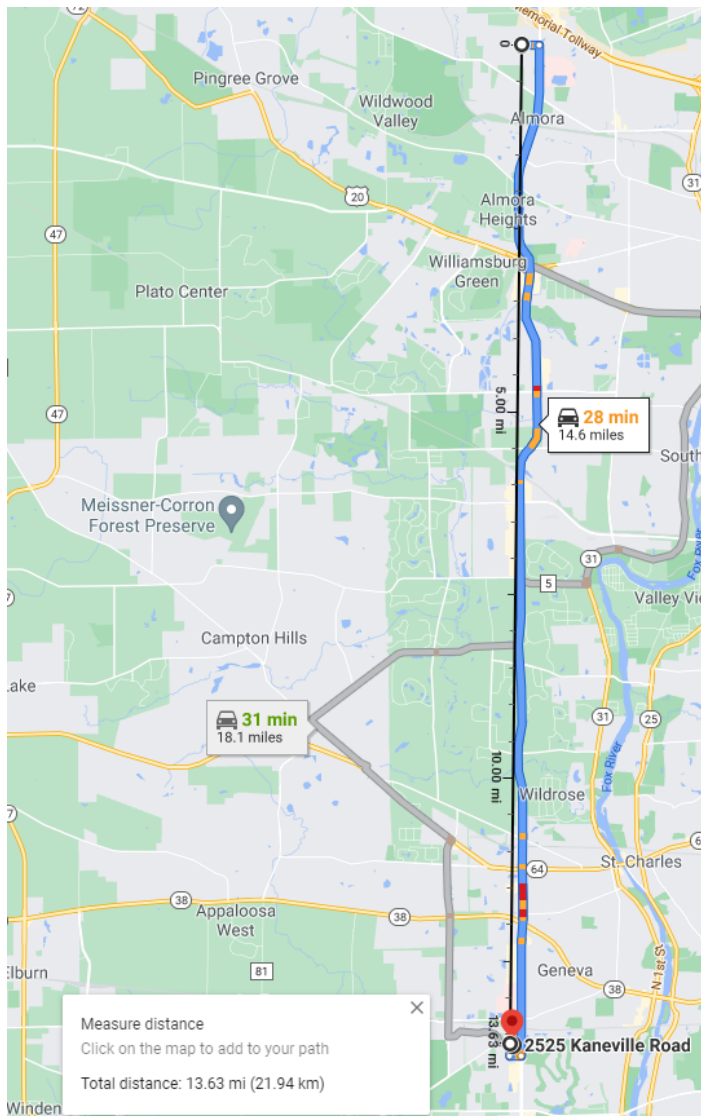
When the proposed referrals for Dr. Mox and Dr. Kazaglis (minus the 29 referrals), and the correct number of proposed referrals for Dr. Daniels are included in the Staff’s calculation, the total number of proposed referrals for the project is 2,745. When you take the 2,745 proposed patient referrals and multiple it by the average procedure time of 107 minutes that equals 293,175 minutes, or 4,895 hours. When divided by the state board standard of 1500 hours per operating rooms, the proposed referrals justify the proposed 4 operating room ASTC. This means **the applicants have met** the following Criteria:

- 77 Ill. Admin. Code Section 1110.120(b)- Projected Utilization
- 77 Ill. Admin. Code Section 1110.235(c)(3)- Service Demand
- 77 Ill. Admin. Code Section 1110.120(c)(5)- Treatment Room Need
- 77 Ill. Admin. Code Section 1110.120(c)(10)- Assurance

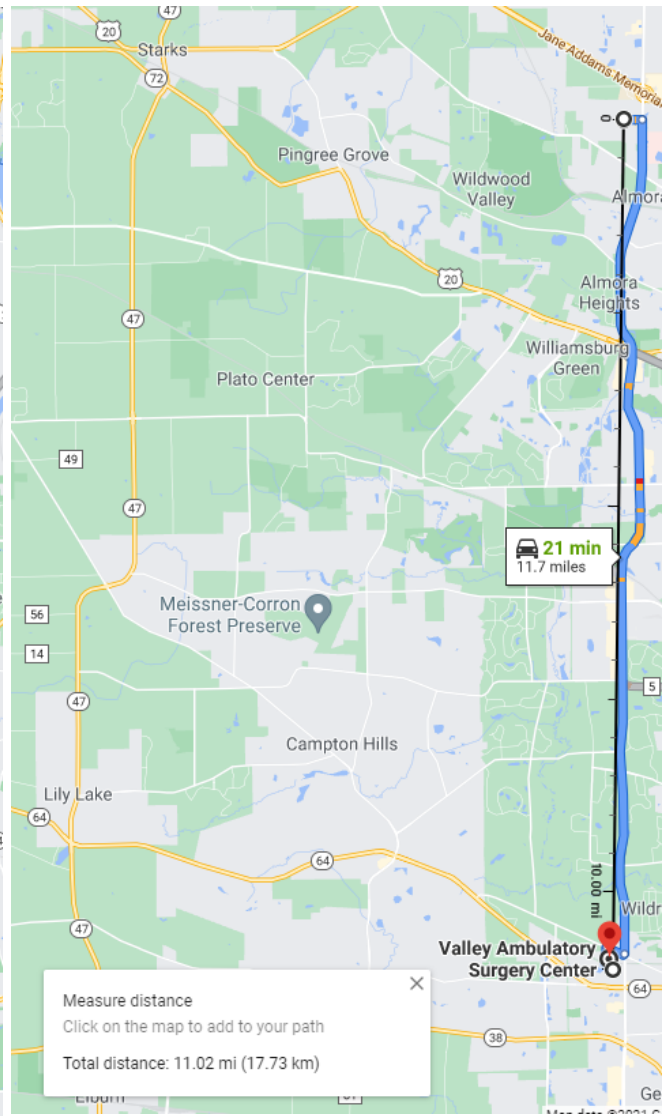
We would respectfully request that Board Staff update the SBSR to reflect compliance with this criterion.

The SBSR also includes additional ASTCs in its analysis of area facility utilization that **are 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

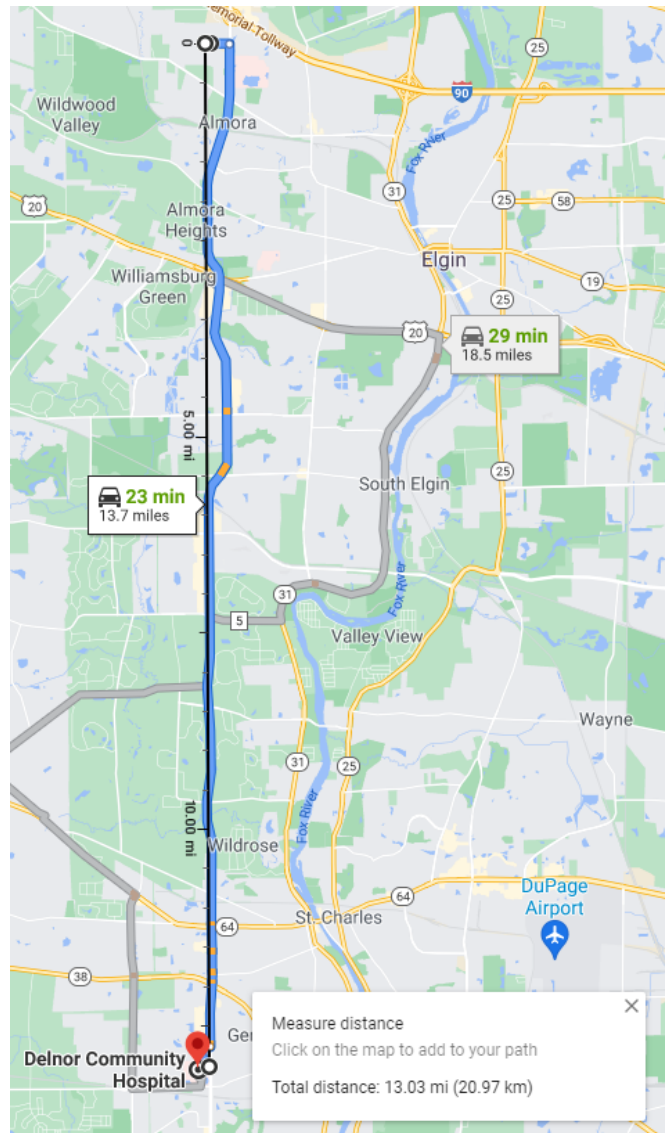
within a 10-mile radius of the applicant facility. Staff included Valley Ambulatory Surgery Center, which **is not located within the 10-mile GSA**, and Fox Valley Orthopedics ASTC in Geneva, Illinois which is **also not located within the 10-mile GSA**. We have two images below from Google Maps that uses a straight line measurement from the proposed facility to these two existing facilities and in both instances the facilities are outside of the 10-mile GSA. In the case of Fox Valley Orthopedic ASC in Geneva, Illinois, it's possible that there was some confusion with another physician practice group by the same name (Fox Valley Orthopedics) that are actually owners in Algonquin Road Surgery Center. Those physicians do not appear to be listed in the on the 2019 ASTC profile for Fox Valley Orthopedics found on the Board's website. Additionally, Board Staff included Delnor Community Hospital in Geneva as a facility within the 10-mile GSA, but it is also outside of the radius of the applicant facility as show in the map below. We would respectfully request the tables provided in the SBSR be updated to remove the facilities not located within the 10-mile GSA.



(Distance from proposed facility to Fox Valley Orthopedic ASTC)



(Distance from proposed facility to Valley Surgery Center)



(Distance from proposed facility to Delnor Community Hospital)

The SBSR also indicates that the applicants did not provide a firm commitment to make this loan should this project be approved. We disagree with that statement as the letter from Illinois Bank & Trust states “Should the State Board approve this project; we will approve a structure (ie. loan) for the project...”. While it would be preferable for the State Board Staff to reconsider this finding, we intend to have the banker available at the Board meeting to attest in person that Illinois Bank & Trust is firmly committed to making a loan for this facility should the Board approve this application.


As acknowledged in the SBSR and cited in the opposition letters submitted for this project, there is an ongoing change in the nation's healthcare delivery system that is driving an increasingly large number of orthopedic and related surgeries out of the hospital and into the surgery center setting. That is why the state's two largest healthcare systems have adopted an ambulatory surgery center strategy that seeks to do exactly what this application sets out to do, save money for the healthcare delivery system. The SBSR also cites letters claiming that this facility is a threat to safety net services in the community. Nothing could be further from the truth, and if it is true that moving outpatient surgeries out of the hospital setting will affect Advocate Sherman's ability to provide safety net services, then why did they propose an ASTC that seeks to do the exact same thing for not only orthopedic surgeries but for four other categories of service?

The SBSR also cites that one of the existing ASTCs in the GSA is the Advocate Sherman ASTC, a project that is inexplicably no closer to completion than it was in 2018, well before the COVID-19 pandemic (despite their opportunistic blaming of COVID-19 and this project). The CON planning process is not designed to allow applicants to apply for, receive permits, and then never complete them. The project was approved 5 years ago with no substantive progress to date. The SBSR notes that the project has a completion date of September 30, 2021, and based on the last available annual progress report it is difficult to believe that the facility will be constructed, licensed and complete by that date.<sup>1</sup> Furthermore, the SBSR states that the Advocate Sherman ASTC project "relies" on physician referrals from Dr. Mox and Dr. Kazaglis for their project. As described above, that issue is moot as the physicians can still meet their commitment if the Advocate Sherman ASTC decides to move forward with their project. Even if they do not move forward with the project, as noted in the SBSR the Advocate system can still send patients to the Algonquin Road Surgery Center in which they maintain an ownership interest.

We thank Board Staff again for the time invested in reviewing this project and ask that updates be provided to the Board to correct the issues identified in this letter. If you have any questions, please contact me at 312-212-4967 or at [jmorado@beneschlaw.com](mailto:jmorado@beneschlaw.com).

Very truly yours,

BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP



Juan Morado, Jr.

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<sup>1</sup> A search of the City of Elgin website Building Permits section reflects that there is only one open permit application for 1445 N. Randall Road, Application 17-54541, which was filed November 20, 2017 and the permit has still not been issued.