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April 6, 2022

Via Email

Ms. Debra Savage, Chairwoman
Illinois Health Facilities and Services Review Board (“Board”)
525 W. Jefferson Street, Second Floor
Springfield, Illinois 62761

**Re: Quincy Medical Group Hospital (Proj. No. 20-044)
Authority and Discretion of the Board**

Dear Ms. Savage and Members of the Board:

In recent meetings of the Board, questions have been raised regarding the permissibility of members of the Board to exercise discretion in determining whether to approve Certificate of Need (“CON”) applications. While that discretion may be statutorily limited in relation to certain applications (e.g., exemption applications), *Illinois law is clear that members of this Board have the authority to exercise discretion in approving permit applications, particularly in relation to those applications that do not satisfy all applicable Board review criteria.*

Board staff is statutorily tasked with an important role of reviewing permit applications to determine compliance with applicable review criteria and certifying its findings to the Board.¹ The Board, however, is not required to mechanically accept or follow the Board staff’s findings.² Rather, *the Board is required to use its independent expert judgment to advance the purposes of the Illinois Health Facilities Planning Act (“Planning Act”), to be the ultimate factfinder and decisionmaker, to evaluate projects holistically, and to exercise discretion in determining whether to approve a project.*³ This authority to exercise discretion extends to projects that do not meet all review criteria and projects where there is not a stated bed-need, as “[t]he stated bed-need in a planning area is a projection; it does not create a fixed pool of beds or bind the Board ... [t]he Board has discretion to approve projects for more beds than present figures might warrant, even where underutilization exists.”⁴

¹ 20 ILCS 3960/12.2(1).

² See *Cathedral Rock v. Granite City, Inc. v. Illinois Health Facilities Planning Board*, 308 Ill. App. 3d 529, 543 (1999); see also *Provena Health v. Illinois Health Facilities Planning Board*, 382 Ill. App. 3d 34, 47 (2008) (“**It is well settled that the Board is not bound by the Department’s findings; it must make its own decision based on the evidence in the record**”).

³ 20 ILCS 3960/2; *Highland Park Convalescent Center, Inc. v. Illinois Health Facilities Planning Board*, 217 Ill. App. 3d 1088, 1092 (1991); *Provena*, 382 Ill App. 3d at 47.

⁴ *Provena*, 382 Ill App. 3d at 47 (emphasis added).

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As set forth in our July 26, 2021 letter, the Planning Act mandates that the Board approve a project if it finds: (1) the applicant is fit, willing, and able to provide a proper standard of healthcare for the community; (2) the project is economically feasible; (3) the project is in the public interest; and (4) the project is consistent with the orderly and economic development of such facilities and in accord with Board standards.⁵ ***It is well settled that “in accord with” does not mean complete compliance as the Board’s regulations and case law explicitly state that (1) a project does not need to comply with all review criteria to justify approval and (2) no one criterion is more pertinent or important than any other.***⁶

Legal counsel for QMG’s competitor, Blessing Hospital, acknowledges that the Board has the discretion to approve permit applications that do not meet all applicable review criteria and that the Board’s authority to exercise discretion is an important part of the CON process.⁷ They suggest, however, that the Board’s approval of QMG Hospital’s permit application would be an unreasonable exercise of discretion and further assert that QMG is asking the Board “to consider factors that the legislature never intended them to consider and . . . several factors that the legislature explicitly provided that the Board should not.”⁸ These conclusory allegations are without merit and without factual or legal support. QMG has not asked the Board to consider improper or irrelevant factors. Further, to date, ***there has been ample evidence submitted to the Board to support the four statutory requirements for the issuance of a permit described above and to justify this Board’s approval of the project.***⁹

A review of the many letters and comments submitted by Blessing Hospital reveals that its concerns with QMG Hospital boil down to a claimed negative impact on its financial bottom line and a perceived fear that any competition in the market will destroy Blessing’s monopoly over hospital care in Adams County.

⁵ 20 ILCS 3960/6.

⁶ 77 Ill. Admin. Code § 1130.660 (“failure of a project to meet one or more of the applicable review criteria shall not prohibit the issuance of a permit”); *Centegra Hospital-McHenry v. Mercy Crystal Lake Hospital and Medical Center*, 2019 IL App. (2d) 180731, ¶ 33; *Mercy Crystal Lake*, 2016 IL App (3d) 130947, ¶ 17; *Provena*, 382 Ill. App. 3d at 42-43.

⁷ See pages 18-19 of March 18, 2022 Public Hearing Transcript for QMG Hospital, Project No. 20-044; see also pages 20-21 of March 18, 2022 Public Hearing Transcript for QMG Birth Center, Project No. 21-029.

⁸ Id.

⁹ See *Centegra Hospital-McHenry*, 2019 IL App. (2d) 180731, ¶¶ 26 – 31 (finding that there was sufficient evidence in the record to support the four statutory requirements for the issuance of a permit under the Planning Act, and, as a result, affirming the Board’s approval of a small format hospital).



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Illinois law is clear that competitors do not have a right to be shielded from competition and that “[i]t is not the Board’s responsibility to protect market share of individual providers.”¹⁰ As one concerned Quincy resident passionately stated in her unsolicited letter of support following the May 26, 2021 meeting when QMG Hospital received an intent-to-deny, *“Please remember that I am a tax-paying citizen of the great state of Illinois, and your job is to consider what MY needs are – not the needs of Blessing Hospital.”*¹¹

The members of this Board have been tasked with a significant responsibility to residents throughout Illinois to evaluate projects holistically — taking into consideration *all* information submitted¹² — and to determine whether a project is consistent with the Planning Act and in the best interest of the public. In those instances, the Board has the discretion and authority to approve a project despite its lack of compliance with Board review criteria.

After reviewing all the information that has been submitted in relation to QMG Hospital, we believe you will find that QMG Hospital is consistent with and will further the purposes of the Planning Act, is in the best interest of residents in West Central Illinois, and it deserves your approval.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca Lindstrom". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

¹⁰ *Provena*, 382 Ill. App. 3d at 48 (rejecting the opposing hospital’s contention that the Board ignored the adverse impact on the hospital and explicitly stating that the Board “**was not required to consider the effect on [the opposing hospital’s] market share or profitability**” (emphasis added)); *see also Cathedral Rock*, 308 Ill. App. 3d at 540.

¹¹ *See* May 26, 2021 Letter of Support from Quincy resident Carol Mohr.

¹² 77 Ill. Admin Code. § 1130.660 (“HFSRB shall consider the application and any additional information or modification submitted by the applicant, HFSRB staff reports, the public hearing testimony and written comments, if any, and other information coming before it in making its determination whether to approve a project.”).