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VIA ELECTRONIC MAIL

March 29, 2024

John P. Kniery
Board Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, Second Floor
Springfield Illinois 62761

**RE: Letter of Opposition and Request for Deferral of Project #E-006-24-
Bloomington Normal Healthcare Surgery Center**

Dear Mr. Kniery,

Eastland Medical Plaza Surgicenter, L.L.C. ("Eastland") is the sole owner of the membership interests of Bloomington-Normal Healthcare, LLC ("BHNC"). BNHC formerly operated the Bloomington Normal Healthcare Surgery Center ("Facility") in Normal, Illinois, which is currently the subject of a recently filed Certificate of Exemption application, Exemption Application E#006-024, which was received by the Board on February 28, 2024 ("Application"). I am writing in opposition to the Application on behalf of the Class A Members of Eastland, all of whom are physicians with practices in the Bloomington, Illinois community and are plaintiffs in the litigation referenced below.

The grounds for the opposition rest on two independent bases: pending litigation between the two classes of Eastland members that could effectively moot the Application and technical deficiencies in the Application.

The Class A Members' Lawsuit Against the Class B Member

The Application contemplates OSF Healthcare System's ("OSF") intention to operate BHNC's formerly operated Facility and to offer procedures in the categories of service for which the Facility was previously approved.

On January 11, 2024, over six weeks before the Board received the Application, Eastland's Class A Members filed a complaint in the Circuit Court of McLean County seeking, among other things, a declaratory judgment against OSF. The case number is 2024-CH-00002 ("the Lawsuit"), and a copy of the complaint is enclosed with this letter.

As described in the complaint, Eastland operates a surgical center in Bloomington, Illinois, less than four miles from the location where the formerly operated BNHC Facility. Eastland, a limited liability company, has two classes of members who own 100% of Eastland's membership interests, *e.g.*, the physician Class A Members referenced above and a single Class B member, OSF. The BNHC Facility ceased operations no later than August 18, 2023.

As further alleged in the Complaint, OSF is seeking to acquire the BNHC membership interests from Eastland with the intention of resuming operations at the Facility in violation of the non-competition clause set forth in Section 11.6 of the Eastland Operating Agreement and over the objections of the Class A Members. Among other things, Section 11.6 precludes OSF from holding any ownership interests in or operating a competing facility within 30 miles of Eastland's Bloomington facility. The Class A Members are seeking a declaratory judgment in the Lawsuit that OSF may not acquire the BNHC membership interests or resume operations at the Facility.

Recognizing that the issue of non-competition under Section 11.6 of the Eastland Operating Agreement is not one for this Board to opine on, the outcome of the Lawsuit is nonetheless paramount to the ability of OSF to proceed as contemplated by its Application. If OSF is unable to prevail in the Lawsuit, OSF will not be able to acquire BNHC or resume operations at the Facility. Respectfully, and pursuant to 77 Ill. Admin Code Section 1130.560(b)(2), the Board should therefore defer any further consideration or resolution of the Application until the Lawsuit is concluded. Indeed, my understanding is there is precedent for the Board deferring consideration of pending applications that are subject to pending litigation and, respectfully, the same approach should be applied here.

The Application Suffers Significant Technical Deficiencies

There are also technical deficiencies with the Application.

Under the Board's process, an Applicant that is a limited liability corporation is required to have either two members or one managing member sign the application certification page. Under 77 Ill. Admin Section 1130.220(a)(2), Eastland is considered a required Applicant and, as such, the application must include a certification of two Eastland members. However, the filed application only contains the signature of the Facility Administrator, who is neither a member of Eastland nor a managing member of Eastland.

The Application should have also included BHNC as an Applicant pursuant to 77 Ill. Admin. Section 1130.220(a)(1) as the entity holds the license for the facility. Thus, as filed, Exemption Application E#006-024 should be rejected independent of the issues noted above regarding the Lawsuit.

Finally, the application was received by the Board on February 28, 2024, several weeks after the filing of the Lawsuit. Yet the Application fails to mention of the ongoing issues with the ownership and operation of the Facility or the Lawsuit. This lack of disclosure to the Board is an affront to their review process. Had my clients and I received more timely notice of the application and ability to request a public hearing, we would have done so in advance of the deadline to request one.

We would also be happy to provide the Board with additional information should they need it. If you should have any further questions regarding this matter, please do not hesitate to contact me by phone at (312) 420-0201 or by email at rmeyer@prospectlaw.com.

The Class A members reserve all rights and claims.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Meyer", is written over a light gray rectangular background.

Derek J. (Rick) Meyer