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VIA ELECTRONIC MAIL

John Kniery
Board Administrator
Health Facilities and Services Review Board
Illinois Department of Public Health
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

RE: Letter of Opposition – Sycamore Specialty Hospital (Project 26-009)

Dear Administrator Kniery,

I represent Kindred Healthcare Operating, LLC (“Kindred”), a provider of long-term acute care hospital (“LTACH”) services in the State of Illinois. Kindred submits this letter in opposition to the certificate of need (“CON”) permit application filed by Sycamore Specialty Hospital, LLC (“Applicant”), Project No. 26-009. Kindred opposes the application for three independent reasons. First, according to the most recent bed inventory published by the Illinois Health Facilities and Services Review Board (“State Board”), there is no identified need for additional LTACH beds within Health Service Area 1. Second, on March 18, 2025, the State Board unanimously approved the discontinuation of Kindred’s LTACH located at the exact same address proposed in the present application, thereby expressly recognizing that LTACH services were not needed at that location in Sycamore. Third, the application is legally defective because it was prepared by attorney Anne Cooper, Kindred’s former legal counsel, in violation of Illinois Supreme Court Rule 1.9. That rule prohibits an attorney from representing another party in the same or a substantially related matter where the new client’s interests are materially adverse to those of the former client absent informed consent. Kindred did not provide such consent.

The State Board Should Oppose the Permit Application Because a Surplus of LTACH Beds Exists in HSA 1.

The Applicant’s proposal is inconsistent with the State Board’s own need methodology and should be denied because Health Service Area 1 (“HSA 1”) already contains a substantial surplus of long-term acute care hospital (“LTACH”) beds. According to the State Board’s most recent Inventory of Health Care Facilities and Services and Need Determinations report, HSA 1 currently contains 54 existing LTACH beds despite a calculated need for only 34 beds. Thus, HSA 1 already has a surplus of 20 LTACH beds before any additional beds are approved. Adding more beds would only exacerbate the surplus.

The State Board Should Oppose the Permit Application Because its Members Already Approved the Discontinuation of an LTACH at the Exact Same Location Last Year.

The proposed long-term acute care hospital (“LTACH”) at the subject address in Sycamore should be denied because the application is fundamentally inconsistent with the State Board’s recent findings regarding need and viability at this exact location. In 2025, the State Board expressly approved the discontinuation of a Kindred LTACH operating at the same address, 225 Edward Street, Sycamore, Illinois (Project 24-038), reflecting a determination that continuation of LTACH services at this site was no longer justified under applicable planning standards and community need considerations. The fact that the former operator of the same facility now opposes the reestablishment of substantially similar services at the identical location further underscores the absence of sustainable demand and the operational challenges historically associated with this site. Approving a new LTACH immediately after authorizing the closure of the prior facility would create an arbitrary and inconsistent regulatory outcome, undermine the integrity of the State Board’s prior findings, and risk unnecessary duplication of specialized healthcare services without sufficient evidence of changed circumstances or unmet regional need.

Furthermore, the utilization data from the nearest operational LTACHs further confirms the absence of need for additional capacity. See Table One below. Specifically, Kindred Chicago Northlake reported a 2023 utilization rate of just 34.3%, Kindred Chicago North reported 43.7%, RML Hinsdale reported 72.9%, and Ascension Holy Family Hospital reported 56.7%. Each of these facilities therefore operated well below the State Board’s regulatory benchmark requiring LTACH facilities to maintain an annual occupancy rate of at least 85%. These underutilization figures demonstrate that existing LTACH providers in and around HSA 1 possess more than sufficient capacity to accommodate current patient demand. Approving additional LTACH beds under these circumstances would unnecessarily duplicate existing services, further dilute utilization among current providers, and directly conflict with the State Board’s established planning standards and need determinations.

TABLE ONE								
Closest LTACHs to Former Kindred Hospital Sycamore/Proposed LTACH								
LTACH	Miles	Beds	2021		2022		2023	
			Patient Days	Utilization	Patient Days	Utilization	Patient Days	Utilization
Kindred Chicago Northlake	58	91	12,014	35.0%	12,205	36.7%	11,407	34.3%
Kindred Chicago North	61	133	23,193	47.8%	20,425	49.5%	20,425	43.7%
RML Hinsdale	50	115	35,732	85.1%	30,818	73.4%	30,593	72.9%
Ascension Holy Family	50	129	30,915	65.7%	28,404	60.3%	26,716	56.7%

The State Board Should Reject This CON Permit Application Because it is Tainted Work Product Developed by an Attorney with a Clear Conflict of Interest and a Blatant Violation of Supreme Court Rule 1.9.

Ms. Anne Cooper formerly represented Kindred Health, most recently acting as Kindred's legal counsel for CON Permit Application 24-038, in which Kindred sought State Board approval to discontinue an LTACH at the exact same location proposed now by SHC. Ms. Cooper now represents SHC. Ms. Cooper's representation of SHC in connection with its pending CON permit application before the State Board violates Illinois Supreme Court Rule 1.9(a) and warrants disqualification, as well as rejection of the application itself.

Rule 1.9(a) prohibits a lawyer from representing a new client in the same or a substantially related matter in which that client's interests are materially adverse to those of a former client, absent informed consent. See Exhibit A, Illinois Supreme Court Rule 1.9. Here, Ms. Cooper previously represented Kindred in matters involving its LTACH at 225 Edward Street in Sycamore. She now represents SHC in seeking approval to establish an LTACH at that identical location, in direct competition with Kindred's prior and continuing interests. The matters are plainly substantially related because they involve the same facility site, the same regulatory framework governing LTACH services, and overlapping issues concerning need, utilization, and operational feasibility in Health Service Area 1. SHC's interests are also materially adverse to Kindred's, as SHC seeks to occupy the same market position and regulatory space formerly held by Kindred at the very same address.

No informed consent was provided by Kindred for Ms. Cooper's subsequent adverse representation. Under Illinois law, where a substantial relationship exists between successive representations, courts presume that confidential information was shared and may be used to the disadvantage of the former client. Given Ms. Cooper's prior representation of Kindred, she necessarily had access to sensitive and confidential information regarding Kindred's LTACH operations, regulatory strategy, financial performance, utilization, and State Board engagement—information directly relevant to SHC's current CON application.

Disqualification is therefore required to protect Kindred's continuing rights to confidentiality and loyalty and to preserve the integrity of the administrative process. In addition, SHC's CON application should be withdrawn or stricken in its entirety because it constitutes tainted work product arising directly from an impermissible conflict of interest. Allowing SHC to proceed on the basis of an application prepared through representation that violates Rule 1.9(a) would improperly permit SHC to benefit from conflicted legal services, risk the use or appearance of use of confidential former-client information, and undermine the fairness and credibility of the State Board's review process. Accordingly, Ms. Cooper should be disqualified from further participation in this matter, and SHC's application should be

rejected or required to be withdrawn and resubmitted through unconflicted counsel as a condition of any further consideration.

If you have any questions or need any additional information regarding the project or this opposition letter, please feel free to contact me via phone at 630-464-4514 or e-mail at JHRLaw2017@gmail.com. Thank you for your attention to this matter.

Respectfully,



Joseph Hylak-Reinholtz
Legal Counsel for Kindred

Enclosures

EXHIBIT A

Illinois Supreme Court Rule 1.9

(see attached)