

Constantino, Mike

From: Joseph.Hylak-Reinholtz@hkllaw.com
Sent: Wednesday, April 24, 2013 4:47 PM
To: Constantino, Mike; Roate, George
Cc: Joseph.Hylak-Reinholtz@hkllaw.com; elias.matsakis@hkllaw.com; mrsillinois2000@aol.com
Subject: Letter re: Response to Public Comments & Support of CON Project 13-007 (Preferred SurgiCenter, LLC)
Attachments: SUPPORT LETTER - H&K obc Preferred SurgiCenter in re Response to Opponents [Project 13-007].pdf

Mike & George:

Please find attached a attached letter in support of the application submitted by Preferred SurgiCenter, LLC (CON Project 13-007). Please forward this letter to Ms. Courtney Avery, Administrator of the Illinois Health Facilities and Services Review Board. Please let me know if you have questions. Thank you very much.

Respectfully submitted,

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April 24, 2013

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

Re: CON Project 13-007 – Preferred SurgiCenter, LLC, Orland Park, Illinois

Dear Ms. Avery:

My firm represents Preferred SurgiCenter, LLC (the "Applicant") in the pending certificate of need ("CON") permit application that proposes to establish a multi-specialty ambulatory surgical treatment center ("ASTC") in Orland Park, Illinois. On behalf of the Applicant, I submit this letter which provides additional information intended to address certain comments raised in two opposition letters on file with the Illinois Health Facilities and Services Review Board ("State Board"). Specifically, this letter responds to the opposition letter submitted by Oak Brook Surgery Center, dated February 14, 2013 and the letter from Oak Lawn Endoscopy, dated February 18, 2013.

(1) Oak Brook Surgical Center

The opposition letter submitted by Oak Brook Surgical Center ("OBSC") states that their ASTC "did not receive proper notification as required by Preferred SurgiCenter, LLC." The Applicant acknowledges that the initial impact letter required pursuant to 77 Ill. Adm. Code 1110.1540(e) was not properly mailed. The Applicant believes that the improper notification referred to by OBSC in its letter relates to the initial impact letter mailed by the Applicant to all hospitals and ASTCs in the Applicant's proposed geographic service area ("GSA"). The initial impact letter was mailed with general postage and was not sent by certified mail, return receipt requested as required by the State Board.

However, the Applicant became aware of the error prior to submitting its CON permit application. To ensure compliance with the impact letter requirement, the Applicant mailed a second impact letter on January 21, 2013, which was sent to every hospital and ASTC in the GSA. The second impact letter was sent, as required, by certified mail, return receipt requested. The replacement letters included the following statement:

Please be advised, we previously sent a letter asking you to respond in writing about the impact our proposed ASTC would have on your health care facility; however, our previous letter was not sent by certified mail, return receipt

requested (which is required by the CON permit application) and required us to send a second request. If you have already responded to our initial letter, please note that there is no need to respond a second time.

The Applicant's second mailing rectified the error with the initial mailing. As a result, the claim of OBSC regarding improper notification is now moot.

(2) Oak Lawn Endoscopy

The Applicant understands that a certain number of health care facilities will raise concerns about a pending CON permit application. The Applicant respects this process and considers all of the points being raised by those persons who take the time and effort to submit written opposition comments. The points of opposition raised in the present matter include the often-raised comments concerning under-utilization of existing providers, unnecessary duplication of services, and the potential effect on health care facility staffing levels. The Applicant understands that these are legitimate concerns, and the Applicant is ready and able to address each of these concerns at the State Board hearing on May 14, 2013.

However, the Applicant is greatly concerned about the opposition letter submitted by Oak Lawn Endoscopy ("OLE") because the letter makes inappropriate personal attacks against Naser Rustom, M.D., the sole owner of Preferred SurgiCenter, LLC. The letter, which breaches the level of decorum expected in such letters, suggests that Dr. Rustom is not qualified or capable of owning and operating a surgery center. The letter questions Dr. Rustom's credentials and suggests that an outsider should not be allowed to own and operate an ASTC in "their" community.

In response to the comments raised by OLE, the Applicant makes the following points:

(1) Adverse Effect on Utilization

OLE claims that a new ASTC near Oak Lawn, Illinois will cause under-utilization at both ASTCs (i.e., OLE's ASTC and the ASTC proposed by the Applicant). The Applicant strongly disagrees with this point. First, the Applicant provided the State Board with a sufficient number of physician referrals to justify the number of procedure rooms requested in its CON permit application. The referring physicians each certified to a certain number of referrals, none of which will be moved from the OLE ASTC to the new site in Orland Park, Illinois.

Second, if OLE is concerned about under-utilization at its existing ASTC, OLE should start by having internal discussions with its own referring physicians. Each of OLE's referring physicians, like the physicians included in the Applicant's CON permit application, are required by State Board rules to certify the number of patient referrals that will be made to a proposed ASTC. The Applicant suspects that some of OLE's physicians are not meeting the number of patient referrals that they pledged when OLE sought its own CON permit to establish an ASTC.

(2) Unnecessary Duplication of Services

The Applicant disagrees with OLE's contention that the proposed ASTC will result in an unnecessary duplication of services in the GSA. While it is true that the primary purpose of the Applicant's project is to establish a mostly-prototypical ASTC that is equipped to meet the needs of all persons living in the GSA, the proposed surgery center will also be the first-ever ASTC designed and operated in a manner intended to meet the needs of Arab-Americans who practice the Islam faith. This fact separates the Applicant's facility from all others in the GSA, and is evidence that the proposed ASTC will not duplicate services because no other ASTC in the GSA will be built and operated to address this key demographic group.

(3) Potential Effect on Staffing Levels

OLE also states that ASTCs require "staffing with highly-trained, competent registered nurses" and that ASTCs "are NOT the places to put part-time staff or nurses without subspecialty training." (emphasis in original letter). If OLE intended by this statement to suggest that the Applicant will be hiring insufficiently trained staff and/or nurses, OLE has no valid basis to make this particular claim. To be clear, the Applicant will only hire appropriately trained staff and nurses at the proposed ASTC. In addition, the Applicant plans to hire staff and nurses who are bilingual in one or more Arabic languages and who are trained to understand the cultural values of Arab-American patients that will be treated at the proposed ASTC. In this sense, the Applicant's staff will have superior training when compared with staff and nurses at existing hospitals and ASTCs in the GSA. Moreover, the Applicant will never operate the ASTC with an insufficient level of staff, and for OLE to suggest otherwise, is unfounded and inappropriate.

(4) Commitment to the Community

OLE also questions the character of the Applicant's sole owner, Naser Rustom, M.D. OLE calls Dr. Rustom an "outsider" and suggests that he has inferior credentials that would not allow him to properly operate an ASTC. These personal attacks, which are highly disrespectful to Dr. Rustom, should be renounced by the State Board.

In response to OLE, Dr. Rustom has exceptional experience with operating ASTCs. Dr. Rustom is involved with other ASTCs, all of which are operated in a manner that fully comports with state and federal regulations and have not been questioned about staffing levels or the qualifications of the staff and nurses employed by those centers. In addition, the State Board has already addressed the question about a non-surgeon owning an ASTC. See Certificate of Exemption Application of Southern Illinois Surgery Center in Marion, Illinois (Project E-001-11), approved by the State Board on June 28, 2011 (approving the CON permit application to allow an attorney to be the sole owner of an ASTC following the change of ownership of said ASTC).

OLE presents the following questions in its opposition letter: "Who exactly will be performing the general surgery, orthopedic, GI endoscopy and pain management procedures at

the proposed facility?" and "What would be the point of a significant number of physicians eschewing multiple local, well-respected, long-standing community affiliated institutions boasting brand new facilities to take their patients to a surgicenter owned by an outsider?" First, if OLE read the CON permit application submitted by the Applicant, beginning at page 182, they would be able to see a clear answer to their first question. The Applicant's CON permit application, on page 182 specifically, provides a list of physicians who will be referring patients to the proposed ASTC. This clearly shows that Dr. Rustom will only own the ASTC and that appropriately qualified physicians will be performing procedures at the ASTC. Second, if OLE looked closely at this chart, they would see that many of the physicians who will be involved with the proposed ASTC also have long-standing ties to Orland Park and its surrounding communities, with some of these physicians serving this area for many years. Many of these capable physicians are not "outsiders" to the community. Consequently, OLE inappropriately suggests that they are the only group of physicians that are capable of meeting and understanding the needs of patients living in the GSA.

* * * *

On behalf of the Applicant, I ask the State Board to approve the CON permit application filed by Preferred SurgiCenter, LLC (Project 13-007). This application should be approved because it presents a unique opportunity to establish an ASTC that is able to meet the needs of all patients living in the GSA, but will also be able to meet the special needs of Arab-Americans, a key demographic group that has been historically underserved in the proposed GSA. Moreover, this letter should prove that Dr. Rustom is capable to own and operate an ASTC, and that such ownership is allowed in this state.

Thank you, in advance, for your consideration.

Respectfully Submitted,



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