

**BEFORE THE  
HEALTH FACILITIES AND SERVICE REVIEW BOARD  
STATE OF ILLINOIS**

*In Re:* )  
 )  
SIH/Memorial Hospital of Carbondale, ) **Project 13-069**  
 )  
Applicant. )

**PUBLIC HEARING WRITTEN COMMENTS**  
**IN OPPOSITION TO PROJECT 13-069**

Marion HealthCare, LLC, (“Marion”) respectfully opposes the Application for Permit at Project No. 13-069. Marion previously requested a public hearing to express its opposition to the project and to raise issues with respect to the Application. In light of the determination by the Board to give each testifying party just five minutes to offer its testimony, Marion respectfully offers the following written comments.

Marion objects to the proposed project on the basis that a portion of the proposal, the planned modernization of the same-day surgical suite and addition of three operating rooms, constitutes an unnecessary duplication of services. Further that aspect of the project amounts to a “back-door” attempt to secure Board approval for the addition of unnecessary facilities without undertaking the obligations that would be required of any other applicant seeking such approval. Respectfully, the application should be denied.

Approval of the project, including approval of the additional three operating rooms, would require the Board to ignore its own rules with respect to duplication of services and excess capacity in the market. At pages 117-119 of the Permit Application, Applicant asserts that additional Operating rooms are necessary to meet its anticipated future growth. Very respectfully, Marion disputes these assertions. Annual utilization data submitted to the Board by all providers of outpatient surgical services in the market (hospital outpatient departments and

ASTCs) demonstrate that there is excess capacity in the market. An addition of three operating rooms as proposed by the applicant will only add to this surplus. Applicant has not contacted the other providers in the geographic market for comment, as would normally be required for a Certificate of Need (CON) to expand surgical capacity, but the state's records speak for themselves. Irrespective of Applicant's unsubstantiated assertions of projected future growth, there is no need in the market for three additional OR's.

Applicant wishes to increase its existing operating rooms from 7 up to 10. The Application is filled with flawed data. For example, the Applicant suggests it needs to add surgical rooms because it projects to increase its utilization in the future. When you look at actual data submitted by the applicant, you will note (at page 111 of the PDF) that in calendar year 2011, there were 701 Cardio-Thoracic cases performed. Using the Applicant's own actual data, for the following year in Calendar Year 2012, there was a tremendous drop in the number of Cardio-Thoracic surgery cases. In 2012, the Cardio-Thoracic surgery cases declined from 701 down to 358.

| CLINICAL SERVICE AREAS        | HISTORIC YEARS |       | PROJECTED YEARS |       | STATE GUIDELINE                     | MET STANDARD? |
|-------------------------------|----------------|-------|-----------------|-------|-------------------------------------|---------------|
|                               | CY11           | CY12  | FY18            | FY19  |                                     |               |
| Cardio-Thoracic Surgery Cases | 701            | 358   | 818             | 811   | N/A                                 |               |
| Cardio-Thoracic Surgery Hours | 2,815          | 2,698 | 4,385           | 4,455 | 1,500 hours per operating room (OR) | Yes           |
| Other                         |                |       |                 |       |                                     |               |

In a single year, from 2011 to 2012, there was essentially a 50% drop in the number of Cardio-Thoracic surgeries. So there is a huge drop in the number of Cardio-Thoracic cases, and this is based on Applicant's actual real numbers. Yet the Applicant supports its requests for

approval of additional surgical operating rooms by arguing it “projects” to increase its Cardio-Thoracic surgery cases in the future. This is a prime example of the flaws in the application process.

See also in the application (at page 111 of the PDF), the number of Cardio-Thoracic surgery hours in Calendar years 2011 and 2012. The applicant indicates the surgical volume dropped by essentially 50%, yet Applicant attests that its overall hours dropped only 117 hrs, from 2815 down to 2698. This is about a 4% drop in surgical hours, yet the case volume dropped by 50%. It is not credible to believe that case volume could drop by 50% yet there would only be a 4% drop in surgical hours.

Similarly, the Application (pg. 158) shows an overall decline in “Other Surgery Cases” between CY 2011-2012, from 6883 down to 6793.

Overall surgical case volume (pg 158) declined between CY 2011-2012, from 7584 in 2011 down to 7151 in 2012. Yet the Applicant argues it needs additional surgical operating rooms. With overall surgical volume declining, and with existing surgical providers in the community under-utilized, there is no justification for three (3) additional Operating Rooms.

Applicant provides no credible rationale as to why additional surgical operating rooms are needed. Applicant’s surgical volume is declining, as noted by its own data, yet it is requesting to expand by an additional 3 rooms.

Applicant is a majority owner of the Physicians LLC, in Carbondale, Illinois. That facility is currently underutilized with a total of three rooms, (2 ORs and 1 Procedure Room). That multi-specialty facility has self-reported 1958.75 hrs, which is well short of the state norms.

Even assuming, *arguendo*, that Applicant has made a case for needing three additional ORs to meet its volume, and ignoring the excess capacity of other providers in the market, this measurement is artificially inflated and will not continue. An agreement between Memorial's parent company, SIH and Blue Cross and Blue Shield of Illinois currently prevents Blue Cross from contracting for outpatient surgical services with competitors of SIH/Memorial. The agreement artificially inflates Memorial's utilization, thereby falsely suggesting there is a need for the additional capacity. This exclusivity agreement is, in Marion's view, a violation of the Sherman Antitrust Act and the State Antitrust Act as an illegal tying arrangement and an illegal attempt to monopolize the market for outpatient surgery reimbursed by commercial insurance companies. The effect of the exclusivity provision is an artificial inflation of Memorial's utilization and results in an increase in prices to the consumer.

SIH has a greater than 77.2% share of the market for outpatient services reimbursed by all payors. On information and belief, the exclusivity agreement between SIH and Blue Cross and Blue Shield of Illinois has caused members of the public to pay inflated costs for their health care at SIH/Memorial, driving up costs for routine outpatient surgical procedures. For example, Patients covered by BlueCross insurance who choose to proceed with cancer screenings are forced to incur greater charges and expenses at in-network hospitals as compared to having the procedures performed at alternative providers.

A case in point is Michael D. Phillips, a resident of Marion, Williamson County, Illinois. Mr. Phillips has consented to have his health information publicly revealed. He is an employee of the city of Marion and covered by BlueCross insurance. He was advised of the need to undergo a cancer screening colonoscopy and esophagogastroduodenoscopy (EGD) in 2011. He inquired about the possibility of undergoing the procedure at an outpatient facility but because of an

exclusive or semi-exclusive contract between SIH and Blue Cross, he was forced to incur large out-of-pocket expenses.

The hospital facility charges for the colonoscopy and EGD procedures were \$12,222.92 and Mr. Phillips' out-of-pocket portion of the bill was \$3,491.17. By contrast, outpatient charges for the exact same procedures at an alternative facility of his choice would have been \$6,511.39, or about 47% less than the in-network facility amount (\$12,222.92) Mr. Phillips was charged.

Mr. Phillips would have paid substantially less out-of-pocket for the exact same service (colonoscopy and EGD), at an alternative facility, yet because of these exclusive or preferential contracts, patients are being forced to pay larger medical bills. In fact, Mr. Phillips was denied his choice of provider and was forced to pay substantially more for the procedures.

These artificial restrictions whereby large not-for-profit hospital systems like SIH now contract with large health plans on the condition that competitors in the market be excluded or effectively frozen out of the market drives up health care costs for consumers. It is bad for quality and bad for patients, and it drives up healthcare costs.

The case of Mr. Phillips is not unusual. State of Illinois, Department of Public Health Charge data ("Charge Data") through September 2011 indicate that Memorial charges over \$6,000 more per procedure for a breast lumpectomy, traditionally performed for localized breast cancer, than at Marion Healthcare. State data reveal Memorial's charges average \$13,003 for the procedure while Marion's average charges are \$6,984. Similar Charge Data for pediatric tonsillectomy reveal average charges of \$10,152 at Memorial, \$12,959 at SIH's Herrin Hospital, and \$4,731 at Marion's facility – less than half the price at Memorial or Herrin. Memorial's charges for pediatric myringotomy (ear) tube insertion are 25% higher than similar service charges at Marion HealthCare (\$7,773 vs. \$5,723).

Another example occurred recently and illustrates the far-reaching effect of SIH's illegal exclusive dealing arrangement with Blue Cross. On information and belief, local surgeon performed surgery recently on a patient who required a Lapidus procedure. That is a surgical repair of a bunion where the bunion is corrected by relocating the entire 1st metatarsal bone back to its proper position in the foot. Because of the SIH exclusivity agreement with Blue Cross, the patient had the procedure done at the hospital. The patient's charges were approximately \$63,000. Yes, sixty-three thousand dollars. Marion's charge for the procedure would have been many thousands of dollars less than the network hospital, but again, SIH's anti-competitive actions effectively prohibited the patient from seeking care at the lowest cost provider.

Additionally, in the application, SIH/Memorial asserts that the local area is a Medically Underserved Area and includes a Medically Underserved Population, as those terms are used by U.S. Department of Health and Human Services. But with all due respect, to assert those claims all the while taking actions that drive up profits is disingenuous at best.

We ask the Board to refuse to exempt SIH/Memorial from the Board's utilization standards for unnecessary duplication of services. Further, we ask that the Board consider the exclusive contract provisions and/or any contract language that impedes competition or limits choice and access to patients when assessing the alleged need for additional capacity.

Statutorily, the objective of the Board is to;

improve the financial ability of the public to obtain necessary health services; to establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public; to maintain and improve the provision of essential health care services and increase the accessibility of those services to the medically underserved and indigent; to assure that the reduction and closure of health care services or facilities is performed in an orderly and timely manner, and that these actions are deemed to be in the best interests of the public; and to assess the financial burden to patients caused by unnecessary health care construction and modification. 20 ILCS 3960/2

The proposed modernization project is directly contrary to the Board's goals because it permits SIH to continue its anti-competitive actions, thereby reducing competition, reducing the availability of quality health care services in the market, and increasing prices. We ask that the project be rejected unless the Applicant, SIH, amends to remove the request to expand its outpatient surgical department.

In addition, we request that Illinois Health Facilities and Services Review Board seek copies of the exclusionary contract(s) and agreements SIH/Memorial has had with Blue Cross and Blue Shield of Illinois during the past seven years, so as to independently verify the tactics SIH/Memorial is using to exclude competing healthcare providers, and driving up overall healthcare costs in the region. It is our belief large hospital systems across the state are utilizing similar tactics to drive up the costs of healthcare.

Respectfully offered this 7<sup>th</sup> day of February, 2014,



for Marion HealthCare, L.L.C.

DR THOMAS REE  
PLIURA

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