16-001

TOWNSHIP OF ORLAND

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MAR 08 2016
HEALTH FACILITIES & SERVICES REVIEW BOARD

March 2, 2016

The Honorable Lisa Madigan
Illinois Attorney General
500 S. Second Street
Springfield, IL 62706

The Honorable Anita Alvarez
Cook County State's Attorney
69 W. Washington, Ste. 3200
Chicago, IL 60602

Re: Application for Writ of *Quo Warranto*: Illinois Health Facilities and Services Review Board

Dear Attorney General Madigan and State's Attorney Alvarez:

I am writing to request that your offices bring an action in *quo warranto* pursuant to 735 ILCS 5/18-101, *et seq.*, against the Illinois Health Facilities and Services Review Board (the "State Board"), which contends to have the power to review and grant St. George Corporation's (the "Applicant") pending Certificate of Need application[1] (the "Application") regarding the Palos Community Hospital (the "Hospital") South Campus MOB[2] in Orland Township (the "Township"). The Applicant proposes a new construction and modernization project as an expansion of its South Campus outpatient complex.[3] If approved, this will result in the closure and demolition of the existing Palos Health and Fitness Center[4] (the "Fitness Center") in the Township. I request the action be brought in part to enjoin the State Board from voting on the Application. I also request that the action be brought against the Applicant directly to enjoin it from either closing or demolishing the Fitness Center.

Under Subsections 1 and 5 of §18-101 of the Code of Civil Procedure, a proceeding in *quo warranto* may be brought when "Any person usurps, intrudes into, or unlawfully holds or executes any office, franchise, or any office in any corporation created by authority of this state" and when "any corporation does or omits to do any act which amounts to a surrender or forfeiture of its rights and

[1] Filed on 1/4/2016 as #16-001. It is classified as a Non-substantive project: where construction or modification projects are not classified as substantive or emergency. Applications classified as non-substantive will be reviewed for conformance with the applicable review criteria in 77 Ill.Adm.Cd. 1110.40(b).
[2] Located generally at the southwest corner of 153rd Street and West Avenue, in Orland Park, Illinois
[3] With common street address of 15300 West Avenue, Orland Park, Illinois
[4] With common street address of 15430 West Avenue, Orland Park, Illinois

privileges ... or exercises power not conferred by law." (emphasis added) 735 ILCS 5/18-101.

The State Board is a body politic created under 20 ILCS 3960/4 to assist with the purposes of the Illinois Health Facilities Planning Act (the "Act"; 20 ILCS 3960/1, *et seq.*), including, without limitation, the promotion of comprehensive health planning, orderly and economic development of health care facilities and promotion of facilities needed for unmet needs of Illinois citizens. Subject to the powers, limitations and duties of the Act, the State Board's responsibilities include the processing of Certificate of Need permit applications, one of the standards of which is "...that safeguards are provided which assure that the establishment, construction or modification of the health care facility or acquisition of major medical equipment is consistent with the public interest...." Act §6(d)(3).

On January 4, 2016, the Applicant filed the Application with the State Board. On January 19, 2016, the Applicant submitted its request for a formal public hearing. On February 18, 2016, a public hearing was held at which ten individuals registered their support for the Application and 244 individuals registered their opposition to the Application.[5] The State Board is currently scheduled to consider the Application at its fast-approaching March 29, 2016 meeting.

While the 107-page Application contains documents related to the construction and modernization project, it is utterly silent about the simultaneously-planned closure and demolition of the Fitness Center, a critical healthcare resource for the local community that the Hospital itself sought approval for in 1998. As such, the Application represents a fundamentally dishonest portrayal of the proposal and should be denied. The Application further fails in articulating how it might preserve the Fitness Center's services. These failures undermine the letter and spirit of the Act and likely violate §6(d)(3) of the Act.

The proposed closure and demolition of the Fitness Center is the one key issue that has caused nearly all of the community opposition to the Application. The Fitness Center is wildly popular with area seniors and other residents precisely because there is no other local facility offering water therapy programs, cardiac fitness classes and the comprehensive range of other high-caliber services that these individuals rely on to support their health, wellness and longevity. Men and women with multiple sclerosis, Parkinson's disease, arthritis and other neurological, chronic, debilitating conditions utilize the Fitness Center for the treatment and management of their ailments.

The Hospital and the Fitness Center Are a Single Integrated Entity.

The Hospital, both in its efforts to first build the Fitness Center and in its subsequent filings with the Office of the Illinois Attorney General and the Internal Revenue Service, has consistently championed its commitment to providing comprehensive wellness services in order to demonstrate its community benefit and justify its tax-exempt status. Closure of the Fitness Center would directly contradict the Hospital's stated mission and be detrimental to the public interest it claims to serve. In 1998, when the Hospital sought approval to construct the Fitness Center, a spokeswoman described the hospital/fitness center relationship as a marriage: "We believe this is essential for the health of the community. The marriage of fitness and medicine is essential to keeping people well. This is the future of health care."

Given the population growth in the southwest suburbs, and in particular the booming senior population, those words ring even truer today. In its Illinois Charitable Organization Annual Report filed with the Attorney

[5] Three individuals registered their attendance as neutral.

General for 2010 (the latest report available online), the Hospital again promoted the community benefit of its holistic approach:

> The health of the communities that PCH serves is a very important piece of the PCH's mission statement. To date, our focus has been on providing the care needed within our community at [a] high level of quality. As such we have implemented and/or maintained programs that we feel help to improve the wellness of the people we serve.

To this day, the Fitness Center trumpets in its promotional material the "integrated" nature of the Hospital's medical services:

> As the only medically-integrated fitness center in Orland Park and the surrounding area, Palos Health & Fitness Center offers our members a dynamic alternative to fitness and health maintenance. ... With a team of degreed health professionals who partners with Palos Community Hospital, you receive all the education, support and encouragement you'll need to make a commitment and stick with it.

Just last spring, the Fitness Center announced its recognition as a Certified Medical Fitness Facility by the Medical Fitness Association.

Therefore, there is no meaningful distinction between the operation of the Hospital and that of the Fitness Center. Any division exists only for purposes of corporate form. As the State Board is aware, the Applicant previously restructured its corporate form to create a new parent corporation and a new subsidiary of that parent to operate the Fitness Center with the specific intent to skirt the State Board's authority over the original construction of the Fitness Center. As a matter of management and healthcare delivery to the local community, the Hospital and the Fitness Center are intrinsically linked and should be considered a single entity for the purposes of compliance with the Act.

The Applicant Failed to Address the Demolition of the Fitness Center.

Throughout the Application, the Applicant carefully dodges any explanation of its plan as it pertains to the fate of the Fitness Center. The Applicant is required to "document that the project will provide health services that improve the health care or well-being of the market area population to be served." In fact, the Applicant's proposal will be detrimental to the healthcare and well-being of the population served; yet the Applicant failed to make note of this significant negative consequence.

The Applicant is also required to identify "alternatives to the proposed project." Again, the Applicant did not propose any alternative that would continue the Fitness Center services unabated, nor did it begin to explain how any benefit of its proposed expansion might outweigh the tremendous loss that will result from the elimination of the Fitness Center.

Moreover, the Fitness Center is a state of the art facility in superb condition, fulfilling an important need in this community, not a building in deteriorating condition requiring a major investment. As such, to comply with the Act and applicable regulations, the Applicant must address the demolition of the Fitness Center in the Application in order to be eligible for a Certificate of Need.

Demolition of the Fitness Center Will Chaotically Diminish Healthcare Access.

The Act is intended to "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." Act §2.

The abrupt demolition of the Fitness Center—particularly without any attempt by the Applicant to promote honest dialogue as part of its application—is anything but orderly and it actually will diminish, not improve, the availability of integrated healthcare and wellness options in communities throughout the Township.

Further, the Act also states: "No person shall construct, modify or establish a health care facility or acquire major medical equipment without first obtaining a permit or exemption from the State Board. * * * A permit or exemption shall be obtained prior to the acquisition of major medical equipment or to the construction or modification of a health care facility which: ... (b) substantially changes the scope or changes the functional operation of the facility; ...." Act §5. By circumventing the Act's clear prohibition to modify a health care facility which substantially changes the scope or functional operation of such facility—namely, the Fitness Center—the Application is exposed as incomplete and must be denied. As illustrated in detail above, the Fitness Center is intrinsically linked to the Hospital's mission and provides important, unique health benefits to the community; yet the Application fails to address this modification to a health care facility.

As the outcome of this action will adversely affect the health and welfare of the residents of the Township and citizens of the State of Illinois located therein, please advise at your earliest convenience whether your Offices will initiate an action in *quo warranto* in this matter to ensure that the Township residents have appropriate access to care in compliance with the provisions of the Act, the Illinois Constitution, and Illinois common law.

Very truly yours,

By: Paul O'Grady

Paul O'Grady, Supervisor
Orland Township

cc: Illinois Health Facilities and Services Review Board
The St. George Corporation