FOLEY
FOLEY & LARDNER LLP

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HEALTH FACILITIES &
SERVICES REVIEW BOARD

ATTORNEYS AT LAW
321 NORTH CLARK STREET, SUITE 2800
CHICAGO, IL 60610-4764
312.832.4500 TEL
312.832.4700 FAX
www.foley.com

WRITER'S DIRECT LINE
312.832.4375
egreen@foley.com EMAIL

CLIENT/MATTER NUMBER
0264141-0149

September 4, 2017

VIA EMAIL & FEDERAL EXPRESS

Ms. Courtney Avery
Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Mr. Mike Constantino
Supervisor, Project Review Section
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: Challenge to Completeness and Opposition to Project No. 16-046
New Lenox Endoscopy Center

Dear Ms. Avery and Mr. Constantino:

We are counsel to Silver Cross Hospital and Medical Centers ("Silver Cross Hospital") and Silver Cross Ambulatory Surgery Center LLC ("Silver Cross Surgery Center"). On behalf of Silver Cross Hospital and Silver Cross Surgery Center, we are writing to voice strong opposition to the Certificate of Need Application (the "Application") filed by New Lenox Endoscopy LLC ("NL Endo"), SGNL LLC ("SGNL"), and Southwest Gastroenterology SC ("Southwest GI," and collectively with NL Endo and SGNL, the "Applicants"), to establish an ambulatory surgical treatment center (the "Proposed Facility") at 678 Cedar Crossing Drive, New Lenox, Illinois (the "Project"). The location of the Proposed Facility is literally adjacent to the Silver Cross Hospital Campus, and to the general public, will appear to be located directly on the Silver Cross Hospital Campus. See Exhibit 1.

We are also formally challenging whether the Application is, in fact, "substantially complete . . . and ready to be reviewed" by the Illinois Health Facilities and Services Review Board (the "Review Board") pursuant to 77 Il. Admin. §1130.620(c)(1).

Background Facts

On or about November 3, 2016, the Applicants filed the Application, which was only partially completed and failed to provide information relative to a number of the review criteria established by the Review Board. The Application was signed, under penalty of perjury, by Dr. Jeffrey Port and Dr. Mihir Majmundar (the "Signatories"). More specifically, the Signatories

attested that "the data and information provided herein, and appended hereto, are complete and correct to the best of his or her knowledge and belief."

On or about January 3, 2017, in response to the incomplete Application, the Review Board Staff sent out a multi-point information request to the Applicants asking the Applicants to provide: (1) projected financial information for two of the three Applicants; (2) historical financial information for one of the Applicants; (3) the names of the owners for one of the Applicants; (4) the proposed payor mix for the Proposed Facility; (5) the admission and charity care policies for the Proposed Facility; (6) the schematic drawing for the Proposed Facility; (7) the number of anticipated referrals from certain facilities identified by the Applicants in the Application; (8) an explanation of the architectural, engineering and new construction and modernization costs for the Project; and (9) financial/fair market value information concerning the lease for the Proposed Facility (the "January 3, 2017 Information Request"). See Exhibit 2. In other words, the Applicants did not even provide basic financial information about the Applicants, the ability of the Applicants to fund the Project, what the Proposed Facility would look like, how the costs for the Projects were arrived at, which types of patients would be treated at the Proposed Facility, and where those patients would come from.

On or about January 25, 2017 (83 days after the Applicants filed the Application), the Applicants filed a Request to Defer Consideration of the Project instead of answering the Review Board's basic and fundamental questions, as set forth in the Review Board's January 3, 2017 Information Request. See Exhibit 3. Silver Cross Hospital and Silver Cross Surgery Center initially believed that the Applicants' failure to submit the requested information was purely an oversight by the Applicants. However, on April 4, 2017 and April 10, 2017 (152 days and 158 days, respectively, after the Applicants filed the Application), the Applicants filed a **partial** response to the January 3, 2017 Information Request and it was truly disconcerting (collectively, the "First Supplemental Filing"). See Exhibit 4.

The First Supplemental Filing literally contradicted the Application in various sections, including, but limited not to, revised case count numbers and conflicting information regarding the accuracy of the proforma financial statements (and other financial information) submitted by the Applicants.

On or about April 11, 2017, Silver Cross Hospital and Silver Cross Surgery Center filed a multiple page opposition setting forth a number of deficiencies and inaccuracies in the Application and First Supplemental Filing (the "Silver Cross April 2017 Opposition Statement"). See Exhibit 5 (without exhibits).

On or about April 12, 2017, the Review Board issued its State Agency Report for the Project (the "April 2017 SAR"). The April 2017 SAR concluded that the Application, as amended by the First Supplemental Filing, failed to meet the Part 1110 Criteria and the Part 1120 Criteria.

On or about May 2, 2017, counsel for the Applicants appeared at the Review Board's May 2, 2017 Hearing on the Project. At that time, the Review Board's Senior Reviewer requested a deferral of the Project because "the State Board Staff believes additional information is needed to clarify information provided by the Applicants and Opposition." Counsel for the Applicants then stated, in support of the deferral request, that the "Applicants need to respond to the Silver Cross opposition letters" and that "Silver Cross provided very selective and incomplete information about their own surgical programs." See Exhibit 6. At no time during the Review Board's consideration of the deferral request, did counsel for the Applicants mention anything about any errors, omissions or inconsistencies in the Application.

On or about May 5, 2017, the Review Board issued another request for information to the Applicants (the "May 5, 2017 Information Request"). The Review Board's May 5, 2017 Information Request raised many, if not all, of the same deficiencies and inaccuracies raised by Silver Cross its Silver Cross April 2017 Opposition Statement.

On or about May 30, 2017, nearly seven months after the Application was filed and after countless filing with the Review Board, the Applicants filed a Type A Modification to the Project, citing errors and omissions in the Application, and responded to the Review Board's May 5, 2017 Information Request (the "Type A Modification"). More specifically, the Applicants filed new proforma financial statements and new sources of financing and blamed the Applicants' administrator, Mr. William Thorner ("Mr. Thorner"), for the errors and omissions in the Application and the First Supplemental Response. **Critically, the statements made in the Type A Modification (and the relevant revised Application pages) have not been certified by the Signatories.** It also bears noting that Mr. Thorner holds a Master's Degree in Health and Hospital Administration from Xavier University, is a Fellow with the American College of Medical Practice Executives, and was the former President of the Ohio Medical Group Management Association. He also has more than 23 years of experience in managing independent and hospital based medical groups. See Exhibit 7 (Mr. Thorner's Linkedin profile). So, in theory, one would assume that Mr. Thorner would know, for example, the difference between cash, debt, depreciable assets, leased assets, and his duty to provide accurate information to the Review Board. Of course, regardless of Mr. Thorner's skillsets, the

Signatories had an obligation, under penalty of perjury, to review and approve every single page of the Application. See page 12 of the Application, wherein the Signatories attested that "the data and information provided herein, and appended hereto, are complete and correct to the best of his or her knowledge and belief."

In other words, the Applicants had multiple opportunities to correct the errors and omissions in their Application but only chose to "review" and modify their Application only after Silver Cross Hospital and Silver Cross Surgery Center filed their April 2017 Opposition Statement and the Review Board sent multiple requests for information (exposing all of the errors and omissions in the Application).

Completeness Challenge

Given all of the errors and omissions acknowledged by the Applicants in their Type A Modification, and for same reasons set herein, it is imperative that the Signatories execute a new Certification for their Application (under penalty of perjury), prior to the scheduling of any hearing by the Review Board on the Application.

At the same time, and as set forth below, the Application is still not complete. Critically information regarding the debt structure (and supporting affidavits) are still missing. The Applicants' failure to file a complete Application, makes it impossible to conduct a detailed and exhaustive review of the Application for the Project, thereby depriving Silver Cross Hospital and Silver Cross Surgery Center of their respective rights to thoughtfully object to a project that will clearly impact Silver Cross Hospital and Silver Cross Surgery Center in a negative manner. Given the location of the Proposed Facility (and the immediate negative impact it will have on Silver Cross Hospital and Silver Cross Surgery Center), it is absolutely imperative that the Applicants be compelled to provide a complete Application -- under oath and penalty of perjury -- to the Review Board, prior to the scheduling of any hearing by the Review Board on the Application.

Opposition

Notwithstanding the foregoing, and out of an abundance of caution, we have elected to file this Opposition in order to preserve the rights of Silver Cross Hospital and Silver Cross Surgery Center and advise the Review Board of their grave concerns about this Project. Silver Cross Hospital and Silver Cross Surgery Center hereby reserve their respective rights to file a

supplemental oppositional statement if the Applicants are allowed another opportunity to modify their Application. What follows is a non-exhaustive list of deficiencies.

Unnecessary Duplication/Maldistribution/Negative Impact on Silver Cross Hospital

On page 94 of the Application, as support for Criterion 1110.1540(h)(Unnecessary Duplication/Maldistribution), the Applicants state that the proposed Facility "will not have an adverse impact on existing facilities in the GSA." The Applicants offer no proof or data to support their conclusory statement in the Application and then directly contradict that statement in their Supplemental Filing by admitting that 2,493 of their projected 3,500 procedures will come from Silver Cross Hospital. In their Type A Modification, the Applications re-affirmed that the Applicants intend to pull 2,493 outpatient GI procedures from Silver Cross Hospital if the Project is approved.

In their Type A Modification, the Applicants assert that the removal of 2,493 outpatient GI procedures from Silver Cross Hospital "will not lower utilization of the dedicated gastroenterology procedure rooms below the State Board utilization standard." Indeed, throughout their Application (and the various supplemental filings), the Applicants have continually cited Silver Cross Hospital's overall surgical volume growth as a factor supporting the need for additional GI procedural suites in the service area. The overall surgical trend at Silver Cross Hospital is not relevant when looking at the utilization rate for the GI procedural suites at Silver Cross Hospital. But, interestingly enough, Silver Cross Hospital's outpatient volume has decreased by 5.1% during the first 7 months of calendar 2017, which directly contradicts the Applicants' projections for continued overall outpatient volume growth at Silver Cross Hospital in the future.

In calendar year 2016, Silver Cross Hospital had 5 GI procedural suites. 8,748 outpatient GI cases were performed in those 5 GI procedural suites in calendar year 2016 and 1,797 inpatient GI cases were performed in those 5 GI procedural suites in calendar year 2016, for a total of 10,545 GI cases in calendar year 2016. GI cases, on average at Silver Cross Hospital, involve 1.57 GI procedures. Note that Silver Cross Hospital reports cases (and not procedures) to the Review Board on its Annual Hospital Questionnaire. That means, 13,734 outpatient GI procedures were performed in those 5 GI procedural suites in calendar year 2016; 2,821 inpatient GI procedures were performed in those 5 GI procedural suites in calendar year 2016; for a total of 16,555 GI procedures in calendar year 2016. By removing 2,493 outpatient GI procedures from Silver Cross Hospital, the Applicants will remove 18.0% of the outpatient GI procedures currently being performed at Silver Cross Hospital and will reduce the total volume of GI

procedures (both inpatient and outpatient) by 15%. This shift in volume would have a significant negative impact on Silver Cross Hospital, decreasing utilization to 79% in the GI procedure suites and causing Silver Cross Hospital to fall below the 80% State Board utilization standard. See Exhibit 8. And because the SW GI physicians would not be prohibited from removing even more GI procedures from Silver Cross Hospital if the Project is approved, Silver Cross Hospital would likely experience a drop to closer to 40% (because the SW GI physicians accounted for close to 41% of the GI procedural suite volume at Silver Cross Hospital in calendar 2016), which would equate to losing nearly half of a service line.

In addition, in their Type A Modification, the Applicants continue to assert that SW GI physicians performed 7,359 outpatient GI procedures in calendar year 2015 in the GI procedural suites at Silver Cross Hospital. According to the medical records kept at Silver Cross Hospital, the Southwest GI physicians performed 5,747 outpatient GI procedures at Silver Cross Hospital during calendar year 2015. **That is a difference of 1,612 procedures or 22%**.

In their Type A Modification, at page 4, the Applicants also assert that "Silver Cross Hospital's surgical program has rapidly become heavily utilized with no additional block time available" and that "due to this overutilization, Silver Cross has not granted dedicated surgical block time to two Southwest Gastroenterology physicians who have requested it." **Again, these statements are simply not true**. Silver Cross Hospital implemented formal block time in their GI procedural suites in October of 2014. At that time, all physicians were provided the opportunity to submit requests and granted block time (and several SW GI physicians were granted procedural block time in October of 2014). SW GI physicians have never been denied block time, and contrary to the Applicants' assertion, the SW GI physicians have continually released their block times at a rate 200% higher than the other GI block time holders. Since October of 2014, there only has been **one** request for block time by a SW GI physician. Coincidentally, that request was made in May of 2017 (i.e., right after Silver Cross Hospital filed its April 2017 Opposition Statement). And that SW GI physician was not denied block time, but was simply asked to provide a second and third block time preference due to the first request being on a higher volume day with several other time blocks open throughout the week. It is a customary practice to ask physicians for alternative days when requesting block time. The block time request was sent to the Block Time Utilization Committee with ranked preferences, as all requests follow this process. Not surprisingly, the SW GI physician **never** followed up on multiple emails sent regarding his block time request and, ultimately, did not take the available block time.

It also bears noting that the SW GI physicians' on-time starts at Silver Cross Hospital are below 50%. In comparison, the other GI physicians at Silver Cross Hospital start on time 83% of the time. SW GI's inability to start on time limits their access and utilization in the GI procedural suites. Critically, a SW GI Physician the Chairman of the Endoscopy Committee and also serves on the Procedural Care Unit Utilization Committee. In that role, the SW GI physician is kept well informed on all of these issues. The Endoscopy Committee and the Procedural Care Unit Utilization Committee monitor access, quality and utilization and the SW GI physician is provided with monthly reports regarding utilization, on-time starts, and block release and withdrawal times. In other words, SW GI's perceived limited access to the GI procedural suites at Silver Cross Hospital is not based on over utilization or unavailable block time but due to the behaviors of the SW GI physicians.

Thus, Silver Cross Hospital long ago created procedural suite block time for the Southwest GI physicians and the Southwest GI physicians have **NEVER** been denied block time at Silver Cross Hospital. The Southwest GI physicians are also on the active medical staffs of multiple facilities. That means the Southwest GI physicians have committed time slots and easy access to GI procedure rooms in the service area.

In short, the Project will lead to unnecessary duplication, maldistribution and will negatively impact Silver Cross Hospital.

Unnecessary Duplication/Maldistribution/Negative Impact on Silver Cross Surgery Center

The Project will also lead to unnecessary duplication, maldistribution and will negatively impact Silver Cross Surgery Center. The Silver Cross Surgery Center is scheduled to open on September 30, 2017 (pending the actual timing of the final inspection by the Illinois Department of Public Health). In their Type A Modification, at page 4, the Applicants assert that "while the Silver Cross Ambulatory Surgery Center will provide capacity in the area, its surgical block time is being dedicated to the physicians who committed referral volume as set out in that CON Application." **Again, this is simply not true**. As the Applicants well know, all surgeons on the Medical Staff at Silver Cross Hospital (including the SW GI physicians) were invited to multiple, informational meetings regarding the investment opportunity in Silver Cross Surgery Center and all surgeons are/were welcome to become partners in the Silver Cross Surgery Center. And irrespective of any ownership interest, all surgeons who desire to perform cases at the Silver Cross Surgery Center will be allowed to the join the Medical Staff for the Silver Cross Surgery Center. In other words, block time at the Silver Cross Surgery Center is being offered to

all members of the Medical Staff at the Silver Cross Surgery Center. SW GI physicians are welcome to join the Medical Staff at the Silver Cross Surgery Center and to utilize the Silver Cross Surgery Center (which has been approved for GI cases).

Furthermore, the Silver Cross Surgery Center is scheduled to open on September 30, 2017, so making the argument for a need in the service area is hard to justify with no actual data from the new Silver Cross Surgery Center to support the claim that the new Silver Cross Surgery Center will not have sufficient capacity. Indeed, the Silver Cross Surgery Center will need (and is entitled to) a minimum of two years to grow prior to a need being established, if any, for more procedure rooms in the service area. Given the proximity of the Proposed Facility to the newly built Silver Cross Surgery Center, one could argue they are virtually on the same campus and the Proposed Facility will cause a great deal of confusion among patients. Attached at Exhibit 1 is a map of the Silver Cross campus highlighting the proximity of the Proposed Facility and the newly built Silver Cross Surgery Center.

In short, the Project will lead to unnecessary duplication, maldistribution and will negatively impact Silver Cross Surgery Center.

Unnecessary Duplication/Maldistribution/Negative Impact on Other Healthcare Facilities Providing GI Services

The Applicants are also proposing to pull 50 GI cases from Advocate Christ Hospital ("Christ Hospital") in Oak Lawn, Illinois and 401 cases from Presence St. Joseph's Hospital in Elgin, Illinois ("St. Joseph Hospital-Elgin"). Christ Hospital is 27.9 miles (or approximately 35 minutes with no traffic) from the location of the Proposed Facility. St. Joseph Hospital-Elgin is 53.1 miles (or approximately 55 minutes with no traffic) from the location of the Proposed Facility. **That means the Applicants are intending to fully utilize the Review Board's 45 minute rule to define the Proposed Facility's service area. Yet, the Applicants completely ignore the capacity of the 24 board approved surgery centers within the 45 minute drive time service area of the Proposed Facility.**

Silver Cross Surgery Center and Rush Oak Brook Surgery Center are among the facilities that have been approved by the Review Board, but not yet opened. Silver Cross Surgery Center and Rush Oak Brook Surgery Center (scheduled to open in 2019) are both planning to provide

GI services. The Silver Cross Surgery Center will literally be within walking distance of the Proposed Facility. Of the 22 open surgery centers, 14 (or 64%) currently provide GI services. Based on the Review Board's published data for 2015, of those 22 surgery centers, only 4 were operating at capacity. Additionally, there are 18 surgery centers or 82% currently operating **under** the Review Board's standard of 1,500 hours per room.

It should also be noted that within the 45 minute drive time of the Proposed Facility there are 20 hospitals providing GI services. Of those 20 hospitals, 15 (or 75%) **have not met** their occupancy targets for operating and procedure rooms. Given this information, it is clear that there is an abundance of access within the geographic service area of the Proposed Facility and any additional facilities, would result in an unnecessary duplication of services, cause a surplus of facilities, and have a negative impact on ambulatory surgery centers and hospitals within the 45 minute drive time geographic service area.

To navigate around the 45 minute rule, the Applicants assert that there is no surgery center in the relevant service area and those that are 30 minutes or farther from New Lenox are experiencing significant volume increases, thereby not able to accommodate new volume. The Applicants specifically mention increased volumes at AmSurg Surgery Center and Elmhurst Outpatient ASC, both of which have capacity based on the last State Agency Report. Elmhurst Outpatient ASC, more specifically, has five (5) rooms available. The Applicants also argue that Preferred Surgical Center only serves a niche population, and therefore, would not be able to provide services to their patients. While Preferred Surgical Center does make it clear they will be able to serve persons of Arabic descent and who are practicing Muslims, their CON Application states that they will provide health care services to persons of all faiths and cultural backgrounds. Critically, Preferred Surgical Center has **not met** their occupancy target. Attached is a table with all ASTCs in the 45 minute drive time offering gastroenterology services with availability. See Exhibit 9.

In short, the Project will lead to unnecessary duplication, maldistribution and will negatively impact a number of healthcare facilities in the service area of the Proposed Facility.

Project Services Utilization and Efficiency

In their Application and their Supplemental Filing, the Applicants assert that they will perform 3,500 GI procedures at the Proposed Facility within two years of its completion. The Applicants also **repeatedly** assert that the Proposed Facility will allow the Applicants to "achieve operational efficiencies that cannot be created at other hospitals. . . ." See, e.g., pages 51, 88 and 114 of the Application. The Applicants also state that the Proposed Facility can justify three procedure rooms because each procedure will take 52 minutes. (3,500 procedures * 52 minutes = 3,033 hours, which would justify 2.022 rooms, which, conveniently, under the Review Board's rules would round up to 3 rooms). See page 65 of the Application.

But as set forth above, the Applicants intend to pull 401 referrals from St. Joseph Hospital-Elgin. St. Joseph Hospital-Elgin is 53.1 miles (or approximately 55 minutes with no traffic) from the location of the Proposed Facility. See page 3 of First Supplemental Filing. **Thus, the Review Board's rules dictate that the 401 referrals from St. Joseph Hospital-Elgin CANNOT be included in the referral case count for the Proposed Facility because St. Joseph Hospital-Elgin is more than 45 minutes away from the Proposed Facility. That, of course, means that the Proposed Facility can no longer support 3 procedure rooms.**

Also, at least as it applies to Silver Cross Hospital, the average GI case only takes 42 minutes. See Silver Cross Hospital's Review Board Profile for 2015. GI cases, on average at Silver Cross Hospital, involve 1.57 GI procedures. Note that Silver Cross Hospital reports cases (and not procedures) to the Review Board on its Annual Hospital Questionnaire. It is impossible to tell from the Application and/or Supplemental Filing if the Applicant's 52 minute average procedure time is really an average case time.

If the Applicants need 52 minutes to perform a GI case, that means Silver Cross Hospital is (and will be) more "efficient" than the Proposed Facility. In other words, Silver Cross Hospital is (and will be) **24%** more efficient than the Proposed Facility. And if the 42 minute case time at Silver Cross Hospital is applied to the Proposed Facility, the Applicants can no longer justify 3 rooms. (3,500 procedures * 42 minutes per case * 1 case/1.57 procedures = 1,560 hours, which only justifies 1.04 rooms, which would barely rounds up to 2 rooms). Even if the Applicants used Silver Cross Hospital's per case time of 42 minutes, the Applicants could not justify 3 rooms. (3,500 procedures * 42 minutes per procedure = 2,450 hours, which only justifies 1.63 rooms, which only rounds up to 2 rooms).

To navigate around this "efficiency argument" the Applicants assert that "slower" is better. They then cite a New England Journal Medicine article that states that the standard time for GI procedures is 30 minutes (or 57% less time than the Applicants are projecting). Indeed, if slower is better, one has to wonder why the SW GI physicians are working so fast in the Silver Cross Hospital GI suites? Instead, it is far more likely that the Applicants have crafted the 52 minute average for the sole purpose of justifying 2.022 rooms, which, conveniently, under the Review Board's rules would round up to 3 rooms.

And, just as critically, Oak Lawn Endoscopy Center (which is also owned by the SW GI physicians) only has 2 procedure rooms and was able to perform 5,550 procedures (or cases) in 2015. So, either the Southwest GI physicians intend to work slower at the Proposed Facility or the Southwest GI physicians intend to divert even more GI procedures/cases from Silver Cross Hospital.

Cost Savings

In their Type A Modification, the Applicants repeatedly assert that surgery centers are "cheaper" than hospitals when it comes to charges. As the Review Board well knows, Medicare and commercial insurance payors effectively subsidize hospitals for the care rendered to Medicaid and self-pay patients.

Furthermore, Silver Cross Surgery Center (which is a separately licensed a surgery center that will NOT be receiving hospital level reimbursements) will presumably have the EXACT same pricing as the Proposed Facility. So, the Proposed Facility will offer no greater savings than will be available within the next month within walking distance of the Proposed Facility. The same can be said for the multitude of underutilized surgery centers offering GI services within the Proposed Facility's service area.

Medicaid and Charity Care

In the Application, the Applicants state, without any qualifications, that: (a) the Proposed Facility will participate in the Medicaid Program; (b) at least 6% of the patients at the Proposed Facility will be Medicaid beneficiaries; and (c) the Proposed Facility will offer "care to uninsured and indigent patients." See page 114 of the Application.

In the First Supplemental Filing made by the Applicants, at Attachment 3, the Manager of NL Endo stated that the Proposed Facility will "maintain the financial viability of the facility while at the same time operating for the benefit of the community" and that NL Endo's

"commitment to charity care will be in line with other ambulatory surgical treatment centers." As the Review Board very well knows, for-profit surgery centers in the State of Illinois rarely, if ever, provide charity care and they tend to rarely, if ever, provide services to Medicaid patients.

To the credit of the Review Board Staff, the Review Board Staff questioned the Applicants "commitment to charity care" in its May 5, 2017 Information Request to the Applicants. In their Type A Modification, the Applicants responded by asserting that approximately 6 to 8.3% of their patients will be on Medicaid. They also cite a "program for uninsured patients" that charges $900 for a colonoscopy. Forgetting for the moment that $900 is not free, the Applicants also assert that they that they will provide "free" endoscopies to patients from the Will-Grundy Medical Center. Unfortunately, the notion that the Applicants will somehow change their ways at the Proposed Facility is not borne out by the data at Silver Cross Hospital. At Silver Cross Hospital, SW GI Physicians only performed GI procedures on 180 Medicaid and Charity Care patients in calendar year 2015 (or approximately 3.8% of the patients treated by the SW GI physicians).

And a quick review of the Review Board data for Oak Lawn Endoscopy Center, which is also owned by the Southwest GI physicians, demonstrates what will likely happen at the Proposed Facility. In 2015, The Southwest GI physicians at Oak Lawn Endoscopy Center treated **two** Medicaid patients and **zero** charity care patients – out of 5,550 patients who received services at the Oak Lawn Endoscopy Center. Thus, Medicaid patients accounted for 0.1% of the total revenues at Oak Lawn Endoscopy Center.

In other words, the likelihood of the Southwest GI physicians providing services to Medicaid and charity care patients at the Proposed Facility seems slight. In 2014, 13.92% of the population in the United States was enrolled in Medicaid, according to the US Census Bureau. 14.7% of patients treated at Silver Cross Hospital are Medicaid beneficiaries, which is consistent with the Will County payer mix. Even if the Applicants elected to provide Medicaid services at the levels they propose, they would still be only serving 40% of the Medicaid population in Will County. Of course, in Cook County (where the Oak Lawn Endoscopy Center is located), 19.4% of the population is on Medicaid. But, even in that market, the Southwest GI physicians only generated 0.1% of the revenue at Oak Lawn Endoscopy Center from Medicaid. 0.1% treated vs. 19.4% of the population is not a compelling historical precedent. It also raises a serious question regarding the types of patients that the Southwest GI physicians intend to treat at the Proposed Facility (and which types of patients that the Southwest GI physician intend to treat at the Silver Cross Hospital).

The Ever Changing (And Still Incomplete) Financial Picture

As recognized by the Review Board when it sent its January 3, 2017 Information Request to the Applicants, the Applicants failed to provide adequate past and future financial information about the Applicants in the Application. The First Supplemental Filing by the Applicants did not solve the problem and raised even more questions. Based on those questions, as highlighted by Silver Cross Hospital and the Review Board Staff, the Applicants filed their Type A Modification and conveniently blamed all of the errors and omissions in the Application and First Supplemental Filing on Mr. Thorner.

According to the Application, the Applicants were not using any debt to finance the Project. Indeed, because the Applicants were allegedly only using cash to fund the Project, the Applicants did not complete several financial sections in the Application.

In the Type A Modification, the Applicants did acknowledge that they were using debt, but they still failed to complete all of the project costs and debt sections of the Application for each of the Applicants. More specifically, in the Application, the Applicants asserted that SGNL will be constructing/modernizing the space (at a cost of approximately $1,653,570), see page 110 of the Application, and that NL Endo, the proposed license holder for the Proposed Facility, will be leasing the space from SGNL. In the Type A Modification, the Applicants asserted that the leased space had a fair market value of $2,289,377. The Type A Modification also attached a generic letter from First Midwest Bank that stated that SW GI had a loan at First Midwest Bank "of at least $798,000." That sounds like an existing line of credit, not a dedicated construction loan. Presumably that line of credit varies throughout the year (as does the available cash at the SW GI, as we learned in the Type A Modification). In any case, there is not a commitment letter (with any material terms) from a lending institution to SGNL (who is funding the build out according to the Application). And there is no affidavit regarding the reasonableness of the debt incurred by SGNL. And there are no term sheets setting forth the material terms of the space and equipment leases between SGNL and NL Endo. Without this information, it is impossible to verify that the Applicants have even financed the Project and that the Applicants will have sufficient cash to fund the remainder of the Project.

Conclusion

Based on what has been filed to date, it is clear that the Project will lead to an unnecessary duplication of services, a maldistribution of services, negatively impact other providers, and negatively impact the safety net. For these reasons, if the Project is allowed to move forward, the Review Board should deny the Project.

Please feel free to contact me if you have any questions.

Sincerely,

Edward J. Green

cc: Paul Pawlak, President and CEO, Silver Cross Hospital and Medical Centers
John Krepps, Manager, Silver Cross Ambulatory Surgery Center LLC

EJG:sxc
Enclosures

Exhibit 1

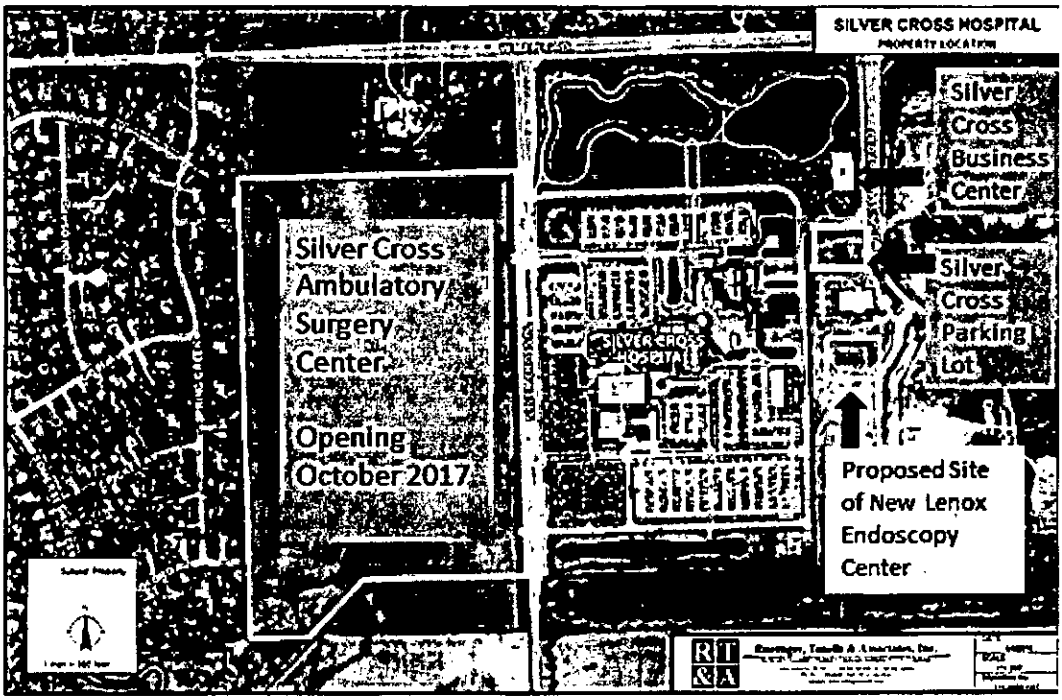
SILVER CROSS HOSPITAL
Silver Cross Business Center
Silver Cross Parking Lot
Silver Cross Ambulatory Surgery Center
Opening October 2017
SILVER CROSS HOSPITAL
Proposed Site of New Lenox Endoscopy Center

Exhibit 2

STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 •(217) 782-3516 FAX: (217) 785-4111

January 3, 2017

Charles Sheets, Attorney
Polsinelli
161 N. Clark Street, Suite 4200
Chicago, IL 60601 -3316

Re: **Request for Information**
Project #16-046, New Lenox Endoscopy Center

Dear Mr. Sheets:

We are in the process of reviewing the application for permit referenced above and need the following information:

1. The projected financial information for New Lenox Endoscopy, LLC and SGNL, LLC for the two (2) years following project completion. We need the projected income statement and balance sheet and the projected ratios and the assumptions used.

2. The three (3) years historical ratios for Southwest Gastroenterology, S.C. and the worksheets.

3. The names of the members of the SGNL, LLC and their percentage of ownership.

4. The expected payor mix of the proposed facility.

Payor Mix	# of Patients	Percentage of Revenue
Medicare Revenue		
Medicaid Revenue		
Private Pay Revenue		
Self Pay Revenue		
Charity Care		

5. The admission and charity care policy for the proposed facility.

6. A schematic drawing of the proposed facility.

7. The number of anticipated referrals from the seven (7) facilities listed in the referral letters to the proposed new facility:

Facility	City	Total Referrals	Number from Each Facility
Advocate Christ Medical Center	Oak Lawn	4,141	
Fullerton ASTC	Chicago	231	
Advocate Good Samaritan	Downers Grove	103	
Little Company of Mary	Evergreen Park	659	
Provena St. Joseph	Elgin	1,679	
Oak Lawn Endoscopy ASTC	Oak Lawn	3,807	
Silver Cross Hospital	New Lenox	7,539	
Total		18,156	

8. An explanation why architectural and engineering fees and new construction and modernization costs have not been included in the project uses of funds schedule.

9. How was the FMV of the lease determined?

Information regarding this project or other matters related to the State Board can be found at http://www.hfsrb.illinois.gov/. Should you have any questions or concerns please contact Mike Constantino at mike.constantino@illinois.gov or 217.785.1557.

Sincerely,

Mike Constantino

Mike Constantino, Project Reviewer
Illinois Health Facilities and Services Review Board

Exhibit 3

POLSINELLI

161 N. Clark Street, Suite 4200, Chicago, IL 60601-3316 • 312.819.1900

January 25, 2017

Anne M. Cooper
(312) 873-3606
(312) 276-4317 Direct Fax
acooper@polsinelli.com

Via Federal Express

Ms. Kathryn J. Olson
Chair
Illinois Health Facilities and Services Review
Board
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

Re: New Lenox Endoscopy Center (Proj. No. 16-046)
Request to Defer Consideration of Application

Dear Ms. Olson:

This office represents New Lenox Endoscopy, LLC; SGNL, LLC; and Southwest Gastroenterology, S.C. (the "Applicants"). Pursuant to Section 1130.640(b) of the Illinois Health Facilities and Services Review Board's ("State Board") regulations, we respectfully request the State Board defer consideration of the New Lenox Endoscopy Center certificate of need application to the May 2, 2017 State Board meeting.

If you have any questions or need any additional information on the Applicants' request to defer consideration of the New Lenox Endoscopy Center certificate of need application, please feel free to contact me.

Sincerely,

Anne M. Cooper

Anne M. Cooper

Exhibit 4

POLSINELLI

150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606-1599 • 312.819.1900

April 4, 2017

Anne M. Cooper
(312) 873-3606
(312) 276-4317 Direct Fax
acooper@polsinelli.com

VIA FEDERAL EXPRESS
VIA E-MAIL
Mike Constantino
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, IL 62761

Re: Additional Information Requested
Project No. 16-046 – New Lenox Endoscopy Center

Dear Mr. Constantino:

This letter is in response to your January 3, 2017 letter in which the Illinois Health Facilities and Services Review Board ("HFSRB") requested additional information for the application for permit for New Lenox Endoscopy Center (Project No. 16-046). Please note the following:

1. Projected financial statements for New Lenox Endoscopy Center, LLC for the three years following project completion are attached as **Attachment – 1.**

2. Three years of historical ratios for Southwest Gastroenterology are attached as **Attachment – 2.**

3. The names and the members of SGNL, LLC and their percentage of ownership are provided in the table below:

Name	Address	Ownership Interest
Jeffrey Port, M.D.	111 West Vernon Park Place #3 Chicago, Illinois 60607	14.28%
Charles Berkelhammer, M.D.	1922 South Prairie Avenue Chicago, Illinois 60616	14.28%
Douglas Lee, M.D.	1040 South Plymouth Court Chicago, Illinois 60605	14.28%

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Name	Address	Ownership Interest
Mihir Majmundar, M.D.	1607 Midwest Club Parkway Oak Brook, Illinois 60523	14.28%
Kamran Ayub, M.D.	22 Luthin Road Oak Brook, Illinois 60523	14.28%
Zahid Afzal, M.D.	6 Concord Drive Oak Brook, Illinois 60523	14.28%
Lola Kwan, M.D.	6421 Waterford Court Willowbrook, Illinois 60527	14.28%

4. The proposed payor mix of the surgery center is proved in the table below:

New Lenox Endoscopy Center		
Payor	Patients	Percentage of Volume
Medicare	1,372	27.20%
Medicaid	196	8.30%
Private Pay	1,862	62.50%
Self Pay	35	1%
Charity Care	35	1%
Total	3,500	100.00%

5. A letter from Dr. Mihir Majmundar, M.D., Manager, New Lenox Endoscopy, LLC attesting that New Lenox Endoscopy Center will accept all patients regardless of ability to pay is attached at **Attachment – 3**.

6. A schematic drawing of the proposed endoscopy center is attached at **Attachment – 4**.

7. The number of anticipated referrals from the seven (7) facilities listed in the referral letter for the proposed endoscopy center is provided in the table below:

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Facility	City	Unused Capacity	Unused Rooms
Advocate Christ Medical Center	Oak Lawn	4,141	50
Fullerton ASTC	Chicago	231	0
Advocate Good Samaritan	Downers Grove	103	0
Little Company of Mary	Evergreen Park	659	0
Presence St. Joseph	Elgin	1,679	401
Oak Lawn Endoscopy ASTC	Oak Lawn	3,807	556
Silver Cross Hospital	New Lenox	7,539	2,493
Total		**18,159**	**3,500**

8. Southwest Gastroenterology, S.C. recently constructed a new medical office building, which will house both the endoscopy center as well as the affiliated medical practice. SGNL, LLC owns the building and is also a co-applicant on the New Lenox Endoscopy Center CON application. New Lenox Endoscopy, LLC will lease the endoscopy center from SGNL, LLC. The lease rate for the endoscopy center is based on the full amortization of the capitalized costs to construct the endoscopy center with a reasonable rate of return. The construction and architectural and engineering costs are captured in the lease rate, and therefore, they were not separately included in the project cost schedule.

9. As discussed above, the fair market value of the leased space is based on the full amortization of the capitalized costs to construct the endoscopy center with a reasonable rate of return.

If you have any questions or need additional information regarding this application for permit, please feel free to contact me.

Sincerely,

Anne M. Cooper

Anne M. Cooper

Attachments

Income Statement
New Lenox Endoscopy Center

	Year 1
Volume	
Endoscopy Cases	3,500
Total Cases	3,500
Operating Revenue	
Facility Fee Revenue	1,890,000
Total Operating Revenue	1,890,000
Operating Expenses	
Salaries and wages	602,000
Benefits	150,500
Medical Supplies	395,000
Other Expenses	192,000
Operating Leases	197,430
Principal Payments	157,168
Interest Expense	78,038
Depreciation	92,505
Total Operating Expenses	1,864,641
Income (Loss) from Operations	25,359

Income Statement New Lenox Endoscopy Center	Year 2 (After Open)
Volume	
Endoscopy Cases	3,640
Total Cases	3,640
Operating Revenue	
Facility Fee Revenue	1,965,600
Total Operating Revenue	1,965,600
Operating Expenses	
Salaries and wages	620,060
Benefits	155,015
Medical Supplies	406,850
Other Expenses	197,760
Operating Leases	203,352
Principal Payments	161,883
Interest Expense	80,379
Depreciation	92,505
Total Operating Expenses	1,917,804
Income (Loss) from Operations	47,796

Income Statement
New Lenox Endoscopy Center

	Year 3 (After Open)
Volume	
Endoscopy Cases	3,750
Total Cases	3,750
Operating Revenue	
Facility Fee Revenue	2,025,000
Total Operating Revenue	2,025,000
Operating Expenses	
Salaries and wages	638,662
Benefits	159,666
Medical Supplies	419,055
Other Expenses	203,692
Operating Leases	209,452
Principal Payments	166,739
Interest Expense	82,790
Depreciation	92,505
Total Operating Expenses	1,972,561
Income (Loss) from Operations	52,440

Southwest Gastroenterology, S.C.
Finanical Viability Ratios
2014-2016

	Standard	2014		Standard Met
Current Ratio				
Current Assets / Current Liabilities	>1.5	$37,715 / $345,628	0.1	No
Net Margin Percentage				
Net Income / Net Revenue	>3.5%	$27,406 / $8,738,731	0.3%	No
Long Term Debt to Capitalization				
Long-Term Debt / Long-Term Debt + Net Assets	<80%	$0 / ($110,919)	0%	N/A
Projected Debt Service Coverage				
Net Income + Depreciation + Interest + Amortization / Principel Payments + Interest	>1.75	$88,646 / $0	N/A	N/A
Days Cash on Hand				
Cash + Investments + Board Designated Funds / Operating Expenses - Depreciation	>45 days	$37,515 / $3,922,820	3.5	No
Cushion Ratio				
Cash + Investments + Board Desiganted Funds / Principal Payments + Interest	>3.0	$37,515 / $0	N/A	N/A

Southwest Gastroenterology, S.C.
Finanical Viability Ratios
2014-2016

	2015		Standard Met
Current Ratio			
Current Assets / Current Liabilities	$28,968 / $1,018,208	0.0	No
Net Margin Percentage			
Net Income / Net Revenue	($9,254) / $8,022,298	-0.1%	Yes
Long Term Debt to Capitalization			
Long-Term Debt / Long-Term Debt + Net Assets	$0 / ($83,513)	0%	Yes
Projected Debt Service Coverage			
Net Income + Depreciation + Interest + Amortization / Principal Payments + Interest	$62,209 / $0	N/A	N/A
Days Cash on Hand			
Cash + Investments + Board Designated Funds / Operating Expenses - Depreciation	$28,768 / $3,766,365	2.8	No
Cushion Ratio			
Cash + Investments + Board Desiganted Funds / Principal Payments + Interest	$28,768 / $0	N/A	N/A

Southwest Gastroenterology, S.C.
Finanical Viability Ratios
2014-2016

	2016		Standard Met
Current Ratio			
Current Assets / Current Liabilities	($50,307) / $797,415	(0.1)	No
Net Margin Percentage			
Net Income / Net Revenue	$697,839 / $8,908,537	8%	Yes
Long Term Debt to Capitalization			
Long-Term Debt / Long-Term Debt + Net Assets	$0 / ($92,767)	N/A	N/A
Projected Debt Service Coverage			
Net Income + Depreciation + Interest + Amortization / Principal Payments + Interest	$709,304 / $0	N/A	N/A
Days Cash on Hand			
Cash + Investments + Board Designated Funds / Operating Expenses - Depreciation	($50,307) / $4,425,913	(4.1)	No
Cushion Ratio			
Cash + Investments + Board Desiganted Funds / Principal Peyments + Interest	($50,307) / $0	N/A	N/A

SouthwestGastroenterology

A division of GI PARTNERS of ILLINOIS, LLC

Jeffrey Port, MD, FACG
Charles Berkelhammer, MD, FACG
Douglas Lee, MD
Mihir Majmundar, MD
Kamran Ayub, MD, MRCP
Zahid Afzal, MD
Lola Kwan, MD
Tarek Almouradi, MD

Debbie Leung, PA-C
Fahmida Khatoon, PA-C
Taylor Aldridge, PA-C
Sandra Bernklau, APN

March 29, 2017

Mr. Michael Constantino
Illinois Health Facilities and Services
Review Board
525 West Jefferson Street, Second
Floor
Springfield, Illinois 62761

Re: New Lenox Endoscopy Center Admission Policy

Dear Mr. Constantino:

I am writing to inform you of New Lenox Endoscopy Center's patient admission policy. New Lenox Endoscopy, LLC is committed to operating the proposed endoscopy center in a manner that will maintain the financial viability of the s facility while at the same time operating for the benefit of the community by promoting health care access for a broad cross-section of the community. To this this end, New Lenox Endoscopy Center will accept all patients who are clinically appropriate for outpatient endoscopy, regardless of their ability to pay, and will not discriminate against individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.

New Lenox Endoscopy, LLC's commitment to charity care will be in line with other Illinois ambulatory surgical treatment centers.

Please let me know if you have any questions or would like additional information regarding New Lenox Endoscopy Center's admissions policy or charity care commitment.

Sincerely,

Mihir Majmundar, M.D.
Manager
New Lenox Endoscopy, LLC

www.southwestgastro.com

Attachment - 3

9921 Southwest Highway
Oak Lawn, Illinois 604538033800.1
708-499-5678 (tel) • 708-499-5685 (fax)

678 Cedar Crossing Drive
New Lenox, Illinois 60451
815-723-9278 (tel) • 815-723-9819 (fax)

301 N. Madison, Suite 302
Joliet, Illinois 60435
815-723-9278 (tel) • 815-723-9819 (fax)

APPROVED FOR CONSTRUCTION ON 2/23/2016

A3.2

TENANT BUILDOUT- SOUTHWEST GASTROENTEROLOGY

678 CEDAR CROSSINGS DR., SUITE 102, NEW LENOX, IL.

Attachment - 4

2401

Exhibit 5

FOLEY
FOLEY & LARDNER LLP

ATTORNEYS AT LAW
321 NORTH CLARK STREET, SUITE 2800
CHICAGO, IL 60610-4764
312.832.4500 TEL
312.832.4700 FAX
www.foley.com

WRITER'S DIRECT LINE
312.832.4375
egreen@foley.com EMAIL

CLIENT/MATTER NUMBER
0264141-0149

April 10, 2017

VIA EMAIL & FEDERAL EXPRESS

Ms. Courtney Avery
Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Mr. Mike Constantino
Supervisor, Project Review Section
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: Challenge to Completeness and Opposition to Project No. 16-046
New Lenox Endoscopy Center

Dear Ms. Avery and Mr. Constantino:

We are counsel to Silver Cross Hospital and Medical Centers ("Silver Cross Hospital") and Silver Cross Ambulatory Surgery Center LLC ("Silver Cross Surgery Center"). On behalf of Silver Cross Hospital and Silver Cross Surgery Center, we are writing to voice strong opposition to the Certificate of Need Application (the "Application") filed by New Lenox Endoscopy LLC ("NL Endo"), SGNL LLC ("SGNL"), and Southwest Gastroenterology SC ("Southwest GI," and collectively with NL Endo and SGNL, the "Applicants"), to establish an ambulatory surgical treatment center (the "Proposed Facility") at 678 Cedar Crossing Drive, New Lenox, Illinois (the "Project"). The location of the Proposed Facility is literally adjacent to the Silver Cross Hospital Campus, and to the general public, will appear to be located directly on the Silver Cross Hospital Campus. See Exhibit 1.

We are also formally challenging whether the Application is, in fact, "substantially complete . . . and ready to be reviewed" by the Illinois Health Facilities and Services Review Board (the "Review Board") pursuant to 77 Il. Admin. §1130.620(c)(1).

Completeness Challenge

On or about November 3, 2016, the Applicants filed the Application, which was only partially completed and failed to provide information relative to a number of the review criteria established by the Review Board. On January 3, 2017, the Review Board sent out a multi-point information request to the Applicants asking the Applicants to provide: (1) projected financial information for two of the three Applicants; (2) historical financial information for one of the Applicants; (3) the names of the owners for one of the Applicants; (4) the proposed payor mix for the Proposed Facility; (5) the admission and charity care policies for the Proposed Facility; (6) the schematic drawing for the Proposed Facility; (7) the number of anticipated referrals from certain facilities identified by the Applicants in the Application; (8) an explanation of the architectural, engineering and new construction and modernization costs for the Project; and (9) financial/fair market value information concerning the lease for the Proposed Facility (the "January 3, 2017 Information Request"). See Exhibit 2. In other words, the Applicants did not even provide basic financial information about the Applicants, the ability of the Applicants to fund the Project, what the Proposed Facility would look like, how the costs for the Projects were arrived at, which types of patients would be treated at the Proposed Facility, and where those patients would come from.

On January 25, 2017 (83 days after the Applicants filed the Application), the Applicants filed a Request to Defer Consideration of the Project instead of answering the Review Board's basic and fundamental questions, as set forth in the Review Board's January 3, 2017 Information Request. See Exhibit 3. Silver Cross Hospital and Silver Cross Surgery Center initially believed that the Applicants' failure to submit the requested information was purely an oversight by the Applicants. However, on April 4, 2017 (152 days after the Applicants filed the Application), the Applicants filed a **partial** response to the January 3, 2017 Information Request and it is truly disconcerting (the "Supplemental Filing"). See Exhibit 4.

In short, the Supplemental Filing definitely contradicts the Application in various sections. For example, and as set forth in greater detail below, it is now clear that at least 71% of the patients from the Proposed Facility will be diverted from Silver Cross Hospital, which is very different than the narrative set forth in the Application. And a closer review of the Supplemental Filing shows that the lead Applicant (Southwest GI) literally had negative cash on hand of -$50,307 at end of the 2016 (which directly contradicts the letter filed as part of the Application in which Standard Bank and Trust Company stated that Southwest GI had at least

$250,000 in cash in deposits as October 31, 2016). See page 103 of the Application. Because the Applicants failed to provide any cash flow information about the other two Applicants, it is impossible to ascertain whether the Applicants collectively have the $2,000,000 in cash needed to construct the Proposed Facility and pay for the Project. Of course, if the Applicants do not have $2,000,000 in cash to fund the Project, the Applicants failed to complete material parts of the Application (including, but limited to, the financial sections of the Application).

At the same time, the Applicants' failure to file a complete Application, and the Applicants' failure to fully answer the Board's January 3, 2017 Information Request, makes it impossible to conduct a detailed and exhaustive review of the Application for the Project, thereby depriving Silver Cross Hospital and Silver Cross Surgery Center of their respective rights to thoughtfully object to a project that will clearly impact Silver Cross Hospital and Silver Cross Surgery Center in a negative manner. Given the location of the Proposed Facility (and the immediate negative impact it will have on Silver Cross Hospital and Silver Cross Surgery Center), it is absolutely imperative that the Applicants be compelled to provide a complete Application -- under oath and penalty of perjury -- to the Review Board, prior to the scheduling of any hearing by the Review Board on the Application.

Opposition

Notwithstanding the foregoing, and out of an abundance of caution, we have elected to file this Opposition in order to preserve the rights of Silver Cross Hospital and Silver Cross Surgery Center and advise the Review Board of their grave concerns about this Project. Silver Cross Hospital and Silver Cross Surgery Center hereby reserve their respective rights to file a supplemental oppositional statement if the Applicants are allowed even more to time to file additional supplements to their Supplemental Filing and/or allowed to appear before the Review Board on May 2, 2017. What follows is a non-exhaustive list of deficiencies.

Unnecessary Duplication/Maldistribution/Negative Impact on Silver Cross Hospital and Silver Cross Surgery Center

On page 94 of the Application, as support for Criterion 1110.1540(h)(Unnecessary Duplication/Maldistribution), the Applicants state that the proposed Facility "will not have an adverse impact on existing facilities in the GSA." The Applicants offer no proof or data to support their conclusory statement in the Application and then directly contradict that statement

in their Supplemental Filing by admitting that 2,493 of their projected 3,500 procedures will come from Silver Cross Hospital.

In addition, the Applicants have seemingly failed to accurately list the actual number of procedures that the Southwest GI doctors performed at Silver Cross Hospital in the past year. According to the medical records kept at Silver Cross Hospital, the Southwest GI doctors performed 6,321 outpatient GI procedures at Silver Cross Hospital during the period from October 1, 2015 to September 30, 2016. This is less than the 7,359 outpatient GI procedures listed by the Applicants as being performed by the Southwest GI doctors at Silver Cross Hospital. See page 138 of the Application and page 3 of the Supplemental Filing. Applying the true procedure counts by the Southwest GI doctors at Silver Cross Hospital means that the Applicants intend to take no less than 39% of their current outpatient GI procedures out of Silver Cross Hospital.

Of course, once the Proposed Facility is built, the Southwest GI doctors will have the ability to move even more outpatient GI procedures out of Silver Cross Hospital. Since the Southwest GI doctors accounted for 51% of the outpatient GI procedures at Silver Cross Hospital during the period from October 1, 2015 to September 30, 2016, that would basically equate to losing half of a service line at Silver Cross Hospital.

Silver Cross Hospital long ago created block surgical time for the Southwest GI physicians. The Southwest GI physicians are also on the active medical staffs of multiple facilities. That means the Southwest GI physicians have committed time slots and easy access to GI procedure rooms in the service area.

In short, the Project will lead to unnecessary duplication, maldistribution and will negatively impact Silver Cross Hospital and Silver Cross Surgery Center. Both Silver Cross Hospital and the Silver Cross Surgery Center (scheduled to open in the late summer/early fall of 2017) have the capacity to accommodate additional GI cases – as do multiple other providers in the proposed service area for the Proposed Facility.

Currently, there are 24 board approved ambulatory surgical treatment centers within the 45 minute drive time geographic service area of the Proposed Facility. Silver Cross Surgery Center and Rush Oak Brook Surgery Center are among the facilities that have been approved by the Review Board, but not yet opened. Silver Cross Surgery Center (scheduled to open in the

late summer/early fall of 2017) and Rush Oak Brook Surgery Center (scheduled to open in 2019) are both planning to provide GI services. The Silver Cross Surgery Center will literally be within walking distance of the Proposed Facility. Of the 22 open surgery centers, 14 (or 64%) currently provide GI services. Based on the Review Board's published data for 2015, of those 22 surgery centers, only 4 were operating at capacity. See Exhibit 5. Additionally, there are 18 surgery centers or 82% currently operating **under** the Review Board's standard of 1,500 hours per room.

It should also be noted that within the 45 minute drive time of the Proposed Facility there are 20 hospitals providing GI services. See Exhibit 6. Of those 20 hospitals, 15 (or 75%) **have not met** their occupancy targets for operating and procedure rooms. Given this information, it is clear that there is an abundance of access within the geographic service area of the Proposed Facility and any additional facilities, would result in an unnecessary duplication of services, cause a surplus of facilities, and have a negative impact on ambulatory surgery centers and hospitals within the 45 minute drive time geographic service area.

Project Services Utilization and Efficiency

In their Application and their Supplemental Filing, the Applicants assert that they will perform 3,500 procedures at the Proposed Facility within two years of its completion. The Applicants also **repeatedly** assert that the Proposed Facility will allow the Applicants to "achieve operational efficiencies that cannot be created at other hospitals. . . ." See, e.g., pages 51, 88 and 114 of the Application. The Applicants also state that the Proposed Facility can justify three procedure rooms because each procedure will take 52 minutes. (3,500 procedures * 52 minutes = 3,033 hours, which would justify 2.022 rooms, which, conveniently, under the Review Board's rules would round up to 3 rooms). See page 65 of the Application.

Well, at least as it applies to Silver Cross Hospital, the average GI case only takes 42 minutes. See Silver Cross Hospital's Review Board Profile for 2015. GI cases, on average at Silver Cross Hospital, involve 1.57 GI procedures. Note that Silver Cross Hospital reports cases (and not procedures) to the Review Board on its Annual Hospital Questionnaire. It is impossible to tell from the Application and/or Supplemental Filing if the Applicant's 52 minute average procedure time is really an average case time.

If the Applicants need 52 minutes to perform a GI case, that means Silver Cross Hospital is (and will be) more "efficient" than the Proposed Facility. In other words, Silver Cross Hospital is (and will be) **24%** more efficient than the Proposed Facility. And if the 42 minute case time at Silver Cross Hospital is applied to the Proposed Facility, the Applicants can no longer justify 3 rooms. (3,500 procedures * 42 minutes per case * 1 case/1.57 procedures = 1,560 hours, which only justifies 1.04 rooms, which would barely rounds up to 2 rooms). Even if the Applicants used Silver Cross Hospital's per case time of 42 minutes, the Applicants could not justify 3 rooms. (3,500 procedures * 42 minutes per procedure = 2,450 hours, which only justifies 1.63 rooms, which only rounds up to 2 rooms).

If the Applicants need 52 minutes to perform a GI procedure, as compared to the average GI procedure time at Silver Cross Hospital of 27 minutes, that means Silver Cross Hospital is (and will be) 92% more efficient than the Proposed Facility.

It also bears noting that the Southwest GI physicians own and operate another surgery center in Oak Lawn, Illinois, known as the Oak Lawn Endoscopy Center. According to the Review Board's data for 2015, the Oak Lawn Endoscopy Center needed 59 minutes to complete a GI procedure or case (depending on how Oak Law Endoscopy reports their information to the Review Board). See Oak Lawn Endoscopy Center's Review Board Profile for 2015.

And, just as critically, Oak Lawn Endoscopy Center only has 2 procedure rooms and was able to perform 5,550 procedures (or cases) in 2015. So, either the Southwest GI physicians intend to work slower at the Proposed Facility or the Southwest GI physicians could divert even more GI procedures/cases from Silver Cross Hospital.

Incomplete Financial Picture

As recognized by the Planning Board when it sent its January 3, 2017 Information Request to the Applicants, the Applicants failed to provide adequate past and future financial information about the Applicants in the Application. The Supplemental Filing by the Applicants did not solve the problem and, quite frankly, raised even more questions.

According to the Application, the Applicants are not using any debt to finance the Project. Indeed, because the Applicants are allegedly only using cash to fund the Project, the Applicants did not complete several financial sections in the Application.

More specifically, in the Application, the Applicants assert that SGNL will be constructing/modernizing the space (at a cost of approximately $1,653,570), see page 110 of the Application, and that NL Endo, the proposed license holder for the Proposed Facility, will be leasing the space from SGNL. But upon review of the proforma income statements for NL Endo, NL Endo is paying $78,038 in interest in year 1 and is making $157,168 in principal payments in year 1. Those interest payments and principal payments grow larger in years 2 and 3. Interest payments and principal payments are associated with debt instruments. Interest payments and principal payments are **NOT** associated with cash. Also, in years 1, 2 and 3, NL Endo is depreciating some asset class at a fixed rate of $92,505 per year. Since NL Endo is also showing operating lease payments of $197,430, it is difficult to ascertain what sort of asset is being depreciated by NL Endo. Indeed, because the Applicants have failed to provide any proforma balance sheets and proforma cash flow statements for NL Endo, it is impossible to ascertain what is truly happening from a financial point of view at NL Endo.

The story is the same for SGNL. SGNL is the Applicant in charge of constructing/modernizing the Proposed Facility. But at this point, the Applicants have provided **ZERO** financial information about SGNL. Without any historical financial information or proforma financial projections, the Applicants have failed to establish that SGNL has at least $1,653,570 in cash ready to be deployed for this Project.

In terms of the final Applicant, Southwest GI, we only know that Southwest GI, as of December 31, 2016, had a negative cash balance and negative current assets. Even stranger is the fact that Southwest GI, according to Standard Bank and Trust had at $250,000 in cash at the Bank as of October 31, 2016 "to support equipment purchases for SGNL & New Lenox Endoscopy Center." See page 103 of the Application. That $250,000 seems to have dwindled to -$50,307 as of December 31, 2016. And if SGNL (and NL Endo) needs $250,000 in cash from Southwest GI to support equipment purchases, does SGNL truly have $1,653,570 in cash to fund the construction/modernization of the Proposed Facility. And is Southwest GI going to purchase the equipment and then lease it to SGNL or NL Endo? Simply put, there are far more open questions than answered questions in the Application in terms of the financial structure and

interconnectedness between the Applicants; the revenues, expenses, assets and liabilities for each of the Applicants; and the financial viability of the Project.

Medicaid and Charity Care

In the Application, the Applicants state, without any qualifications, that: (a) the Proposed Facility will participate in the Medicaid Program; (b) at least 6% of the patients at the Proposed Facility will be Medicaid beneficiaries; and (c) the Proposed Facility will offer "care to uninsured and indigent patients." See page 114 of the Application.

But the Supplemental Filing by the Applicants seems to call these statements into question. At Attachment 3 of the Supplemental Filing, the Manager of NL Endo states that the Proposed Facility will "maintain the financial viability of the facility while at the same time operating for the benefit of the community" and that NL Endo's "commitment to charity care will be in line with other ambulatory surgical treatment centers." As the Review Board very well knows, for-profit surgery centers in the State of Illinois rarely, if ever, provide charity care and they tend to rarely, if ever, provide services to Medicaid patients.

Indeed, a quick review of the Review Board data for Oak Lawn Endoscopy Center, which is also owned by the Southwest GI physicians, demonstrates what may happen at the Proposed Facility. In 2015, The Southwest GI physicians at Oak Lawn Endoscopy Center treated **two** Medicaid patients and **zero** charity care patients – out of 5,550 patients who received services at the Oak Lawn Endoscopy Center. Medicaid patients accounted for 0.1% of the total revenues at Oak Lawn Endoscopy Center.

In other words, the likelihood of the Southwest GI physicians providing services to Medicaid and charity care patients at the Proposed Facility seems slight. In 2014, 13.92% of the population in the United States was enrolled in Medicaid, according to the US Census Bureau. 14.7% of patients treated at Silver Cross Hospital are Medicaid beneficiaries, which is consistent with the Will County payer mix. Even if the Applicants elected to provide Medicaid services at the levels they propose, they would still be only serving 40% of the Medicaid population in Will County. Of course, in Cook County (where the Oak Lawn Endoscopy Center is located), 19.4% of the population is on Medicaid. But, even in that market, the Southwest GI physicians only generated 0.1% of the revenue at Oak Lawn Endoscopy Center from Medicaid. 0.1% treated vs. 19.4% of the population is not a compelling historical precedent. It also raises a serious question

regarding the types of patients that the Southwest GI physicians intend to treat at the Proposed Facility (and which types of patients that the Southwest GI physician intend to treat at the Silver Cross Hospital).

Conclusion

At this late stage, there are far too many unanswered questions. As a consequence, the Applicants should not be allowed to proceed to a hearing under these circumstances. It is impossible (as an impacted party) to even assess what has been filed – because so much information is missing.

Based on what has been filed to date, it is clear that the Project will lead to an unnecessary duplication of services, a maldistribution of services, negatively impact other providers, and negatively impact the safety net. For these reasons, if the Project is allowed to move forward, the Review Board should deny the Project.

Please feel free to contact me if you have any questions.

Sincerely,

Edward J. Green

cc: Paul Pawlak, President and CEO, Silver Cross Hospital and Medical Centers
John Krepps, Manager, Silver Cross Ambulatory Surgery Center LLC

EJG:sxc
Enclosures

Exhibit 6

1 - - -

2 CHAIRWOMAN OLSON: I would call to the
3 table, Project H-01, Project 16-046, New Lenox
4 Endoscopy Center.
5 May I have a motion to approve Project
6 16-046, New Lenox Endoscopy Center to establish a
7 limited ASTC in New Lenox?
8 MEMBER JOHNSON: So moved.
9 MEMBER INGRAM: Second.
10 CHAIRWOMAN OLSON: I have a motion and a
11 second.
12 The Applicants will be sworn in, please.
13 (Applicants sworn by court reporter.)
14 Mr. Constantino, your report?
15 MR. CONSTANTINO: Thank you, Madam
16 Chairwoman.
17 The Applicants are proposing to establish
18 a Limited Specialty ASTC in leased space, at a cost
19 of approximately 2 million dollars. We are asking
20 the State Board for a State Board deferral of this
21 project. The reason we're asking for this State
22 Board deferral is because the State Board Staff
23 believes additional information is needed to clarify
24 information provided by the Applicants and the

1 Opposition.
2 And if you go to page 2 of your report, in
3 the Executive Summary, we tried to list out the
4 reasons for requesting the State Board deferral.
5 In this case, all applications have to
6 be -- have initial consideration within six months of
7 being deemed complete, and this is the last meeting
8 to meet that six-month timeframe for this Application
9 for Permit. So that has been -- and then we need
10 clarification on items that were submitted to us.
11 Thank you, Madam Chairwoman.
12 CHAIRWOMAN OLSON: Do you have any
13 comments for the Board?
14 MS. FRIEDMAN: Just a few. We'll be
15 brief.
16 I'm Kara Friedman, K-A-R-A,
17 F-R-I-E-D-M-A-N. With me is Chuck Sheets,
18 S-H-E-E-T-S. We're both counsel for the Applicant
19 and we're with the law firm of Polsinelli,
20 P-O-L-S-I-N-E-L-L-I.
21 Good morning. Today, we appreciate that
22 at this juncture, the Applicants need to respond to
23 the Silver Cross opposition letters.
24 Silver Cross only communicated its

1 position on this project at the very end of the
2 public comment period more than 150 days after the
3 Application was filed, and when the project was
4 deferred, the Applicants would need time to respond
5 to Silver Cross's letter, and we certainly want to
6 address the questions specifically identified by
7 Staff that were derived from this letter.
8 In opposing this project, Silver Cross
9 provided very selective and incomplete information
10 about its own surgical programs, and it ignored the
11 fact that this project is almost exclusively a
12 transfer of cases from endoscopy programs that are
13 operating above target utilization for endoscopy;
14 namely, Oak Lawn Endoscopy, which is operating over
15 50 percent of its targeted capacity, and St. Joseph's
16 Presence in Joliet, and Silver Cross in New Lenox.
17 Each of these programs justifies at least
18 one more endoscopy room than it currently operates.
19 This project is for a small, lower-cost, freestanding
20 endoscopy center with just three rooms.
21 The new Silver Cross Hospital opened five
22 years ago in New Lenox. Due to acquiring a larger
23 market share at its new address, it quickly outgrew
24 its capacity for surgical services.

1 In its ASC application, which was approved
2 last year, it describes the fact that it operates 15
3 surgical operating and procedure rooms in the
4 hospital, but its volume justifies 19. It's only
5 building three more rooms in its new ASC and granting
6 block time for those rooms to the 29 physicians who
7 provided referral letters in connection with its
8 application. None of those physicians are affiliated
9 with this project.
10 Even after moving the volume of three
11 operating rooms, the hospital will still be over
12 target utilization for their surgery cases. This
13 fact doesn't take into account Silver Cross's
14 three-year surgical growth from five percent a year
15 for the last three years. Thus, this project is
16 needed to provide adequate capacity for endoscopy
17 services.
18 In seeking approval for its ASC, Silver
19 Cross cited the substantial cost savings to payers in
20 the ASC settings, but that consideration was ignored
21 in its comments for this project. The payers will
22 easily save a million dollars a year if these cases
23 are transitioned to a freestanding endoscopy center.
24 We believe the differential in cost to

1 payers is the key health plan imperative of this
2 project and for broader surgery center projects like
3 it.
4 Thank you for the opportunity to provide
5 preliminary comments, and we look forward to
6 presenting the project at your next meeting in all of
7 its details when Applicant can respond to the Staff's
8 inquiries.
9 CHAIRWOMAN OLSON: Thank you. So can we
10 have a motion to -- do we have to vote down this
11 motion? What's Roberts' Rules of Order here? We
12 have a motion on the table.
13 MR. MORADO: We can withdraw the motion.
14 CHAIRWOMAN OLSON: Okay. Who made the
15 motion?
16 MR. ROATE: Motion made by Mr. Johnson,
17 seconded by Senator Demuzio.
18 MEMBER JOHNSON: I'll withdraw my motion.
19 CHAIRWOMAN OLSON: And so now we need a
20 new motion to defer Project 16-046, New Lenox
21 Endoscopy Center, waiting on additional information.
22 MEMBER SEWELL: So moved.
23 CHAIRWOMAN OLSON: Can I have a second on
24 that?

1 MEMBER DEMUZIO: Second.
2 CHAIRWOMAN OLSON: Do you have other
3 questions to the Applicants before you vote, Mike,
4 or...
5 MR. CONSTANTINO: No. We'll make those
6 questions in writing so we'll have documentation.
7 CHAIRWOMAN OLSON: All right. I'll call
8 for a roll call vote then.
9 MR. ROATE: Motion made by Mr. Sewell,
10 seconded by Senator Demuzio.
11 Senator Burzynski?
12 MEMBER BURZYNSKI: Yes.
13 MR. ROATE: Senator Demuzio?
14 MEMBER DEMUZIO: Yes.
15 MR. ROATE: Ms. Murphy?
16 MEMBER ETERNO-MURPHY: Yes.
17 MR. ROATE: Mr. Ingram?
18 MEMBER INGRAM: Yes.
19 MR. ROATE: Mr. Johnson?
20 MEMBER JOHNSON: Yes.
21 MR. ROATE: Mr. McGlasson?
22 MEMBER MCGLASSON: Yes.
23 MR. ROATE: Mr. Sewell?
24 MEMBER SEWELL: Yes.

1 MR. ROATE: Madam Chair?
2 CHAIRWOMAN OLSON: Yes.
3 MR. ROATE: That's eight votes in the
4 affirmative.
5 CHAIRWOMAN OLSON: The motion passes and
6 we'll see you in June.
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Exhibit 7

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William Thorner

Practice Administrator at Anderson Hills Pediatrics

Cincinnati, Ohio Medical Practice

500+ connections

Current	Anderson Hills Pediatrics
Previous	Southwest Gastroenterology, Greater Ohio Eye Surgeons, Ohio MGMA
Education	Xavier University

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Matthew Russell N.A.L.P
Leasing Professional at Gables Residential

Donna Smith
Actively searching for Medical billing and coding jobs in the Bellefontaine, Ohio/ Dublin, Ohio area.

Julia Proffitt
Looking for employment opportunity in Tri-Cities area

Nessie Hicks
Administrative Asst at Cincinnati Childrens Hospital Medical Center

Mary Pat McKee
at

Clare Duane
Education Consultant at Cincinnati Childrens Hospital Medical Center

Summary

William H. Thorner serves as the Practice Administrator at Anderson Hills Pediatrics in Cincinnati, Ohio. Anderson Hills Pediatrics is a comprehensive pediatric practice serving the needs of the east side of Cincinnati.

Mr. Thorner is a Fellow of the American College of Medical Practice Executive (FACMPE) by the Medical Group Management Association. The FACMPE credential serves to demonstrate knowledge and experience in medical practice management. Mr. Thorner earned a Master Degree in Hospital and Health Administration from Xavier University.

Mr. Thorner has served in several leadership positions with Ohio Medical Group Management Association. The positions range from secretary to president of the association. Mr. Thorner is involved with the American Association of Ophthalmology Administrators (ASOA) on the Web Seminar Task Force.

Before taking the position at Anderson Hills Pediatrics, Mr. Thorner served for over 2 years as the Chief Operating Officer at Southwest Gastroenterology located in Chicago, Illinois. He was also employed for 13 years in practice management roles at Cincinnati Children's Hospital Medical Center. Mr. Thorner led the divisions of Ophthalmology, Neurosurgery and Plastic Surgery. He worked closely with hospital leadership to improve the research, academic and clinical offering of these divisions.

Skills

Medical Practice Analysis · EPIC EMR Experience · Volunteer Board Member Training · Revenue Cycle · Marketing · Management · EMR · Healthcare Information Technology

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William Thorner
Sr. Business Director at Cincinnati Children's Hospital Medical Center
United States

Bill Thorner
Dentist/Owner
United States

Billy Thorner
Dog Walker at Kitty Cup Provisions
United States

Will Thorner
owner at Thorner Construction
United States

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Experience

Practice Administrator
Anderson Hills Pediatrics
April 2017 – Present (5 months)

Lead 13 physician pediatric group located with 2 locations. Direct the operations of the pediatric practice including finance, accounting, marketing, and business development.

Chief Operating Officer
Southwest Gastroenterology
May 2015 – April 2017 (2 years)

Lead 8 physician gastroenterology group in Oak Lawn, Illinois. Manage multiple locations and staff.

Practice Administrator
Greater Ohio Eye Surgeons
June 2012 – February 2015 (2 years 9 months)

Directed the operation of ophthalmology practice in providing clinical, business, outreach, financial management and marketing activities. The practice sees patients in 4 locations located in the Miami Valley.

Board Member
Ohio MGMA
2011 – 2013 (2 years)

Board Officer
Clovernook Center for the Blind and Visually Impaired
January 2000 – June 2012 (12 years 6 months)

Provide oversight to the Clovernook Center for the Blind and Visually Impaired

President
Ohio Medical Group Management Association
January 2011 – December 2011 (1 year)

Provide oversight to the Ohio Medical Group Management Association

Business Director
Cincinnati Children's Hospital Medical Center
February 1998 – October 2011 (13 years 9 months)

Medical practice manager of Neurosurgery and Ophthalmology. Manage business operations of these two divisions

Business Manager
Middletown Regional Hospital
January 1994 – January 1998 (4 years 1 month)

Organizations

American Gastroenterology Association

Ohio Medical Group Management
Starting January 2005

Medical Group Management Association
Starting January 2004

Illinois Medical Group Management Association
Starting June 2015

Certifications

Certified Medical Practice Executive (CMPE)
Medical Group Management Association

Fellow, American College of Medical Practice Executives (FACMPE)
Medical Group Management Association Utah (MGMA Utah)
October 2015 – Present

Education

Xavier University
Bachelor of Science in Business Administration
1982 – 1986

Xavier University
MHA, Hospital and Healthcare Administration

Groups

HFMA - Healthcare Fi... Healthcare Executives Xavier University Alu... ACHE of Greater Ohio

Healthcare Managem... Medical Group Mana... Healthcare Business ... See 2 more

View William's full profile to...

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Exhibit 8

Silver Cross Hospital Gastroenterology Room Utilization

	Silver Cross Calendar Year	SWGI Proposed Move	Revised Silver Cross Utilization
Cases			
Inpatient	1,797		1,797
Outpatient	8,748	(1,588)	7,160
Total	10,545	(1,588)	8,957
Hours			
Inpatient	1,243		1,243
Outpatient	5,745	(1,043)	4,702
Total	6,988	(1,043)	5,945
Inpatient	0.692		0.692
Outpatient	0.657		0.657
Total	0.66		0.66
#Rooms	5	5	5
Hrs/Room@80%	1,500	1,500	1,500
	7,500	7,500	7,500
Utilization	93%		79%

Exhibit 9

Ambulatory Surgical Treatment Centers within 45 minutes of proposed New Lenox Endoscopy									
Name	City	Currently Provides Gastroenterology Services	Adjusted Drive Time	Number of Operating & Procedure Rooms	Total Hours	Number of Rooms Justified	Rooms Justified	Rooms Available	Utilization at 80% (1,500 hours per Room)
Silver Cross Ambulatory Surgery Center	New Lenox	Yes	2.3	3	Opening October 2017	3		Yes	TBD
Tinley Woods Surgery Center	Tinley Park	Yes	12.7	5	3,783	3	No	2	50.4%
Preferred SurgCenter, LLC	Orland Park	Yes	23.0	5	249	1	No	4	3.3%
Midwest Day Surgery, LLC - DBA Midwest Center for Day Surgery	Downer's Grove	Yes	29.9	5	3,434	3	No	2	45.8%
Am Surg Surgery Center	Joliet	Yes	31.1	7	8,871	6	No	1	84.5%
The Center for Surgery	Naperville	Yes	32.2	11	4,206	3	No	8	25.5%
Palos Surgicenter, LLC	Palos Heights	Yes	33.4	5	3,054	3	No	2	40.7%
Forest Med-Surg Center	Justice	Yes	35.7	4	765	1	No	3	12.8%
Plainfield Surgery Center, LLC	Plainfield	Yes	36.8	4	2,501	2	No	2	41.7%
Alden Center for Day Surgery, LLC	Addison	Yes	38.0	4	531	1	No	3	8.9%
Elmhurst Outpatient Surgery Center	Elmhurst	Yes	38.0	8	3,332	3	No	5	27.8%
Children's Outpatient Services at Westchester	Westchester	Yes	40.3	3	2,794	2	No	1	62.1%
TOTAL				61	33,520	28		33	36.6%

Source: Illinois Health Facilities & Services Review Board Website, Ambulatory Surgical Treatment Center Data Profiles, ASTC Profiles by Facility, 2015