THE SPRINGS
at Crystal Lake Rehab Center

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HEALTH FACILITIES &
SERVICES REVIEW BOARD

Via Overnight Courier

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

Re: Transformative Health of McHenry, Project No. 18-016 (the "Project")

Dear Ms. Avery:

We have been reviewing the permit application for the Project referenced above (the "Application"). In our review, it appears that the Application is missing important information required by your rules. We believe that this information is important to the public in reviewing the Project, and particularly important to Board members and staff.

This letter outlines information missing from the Application that is required by the Review Board regulations. We would ask that the Board defer action on this Application until the Applicants provide the necessary information to the Board and its staff and the public has opportunity to comment on the new information. Alternatively, we believe the State Board Report should make negative findings on review criteria where necessary documentation has not been submitted.

1. Organization Structure and Ownership

The Application repeatedly states that this is a "refile" of a prior application, notwithstanding that the vast majority of the applicants are completely different parties. One of the difficult aspects in understanding the Application is determining who the entities are and what role they play in the Project.

The CON application form requires that Applicants provide an "organizational chart containing the name or relationship of person or entity that is related".[1] Further, the applicants are required to describe the interest and amount or type of any financial contribution.

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[1] **Organizational Relationships**

Provide (for each applicant) an organizational chart containing the name and relationship of any person or entity who is related (as defined in Part 1130.140). If the related person or entity is participating in the development or funding of the project, describe the interest and the amount and type of any financial contribution. (Application p. 2)

The organizational chart at page 60 does not show all of the co-applicants, for example, the co-applicant Leo Brown Group, LLC is not even listed. Also, the Application states TCO JV, LLC is a joint venture, however, the org chart does not show the owners and does not describe who has "final control" of TCO JV. Similarly, the org chart gives no explanation of the ownership interest of the listed parties and does not describe the "interest and amount of any financial contribution". Also troubling is that the Application and org chart omits "any person who is related". Further, the org chart does not explain the role of some entities, such as Ignite McHenry, LLC or Ignite McHenry Property, LLC. Also, the owner of the property, Senior Acquisitions LLC, and its relationship to the transaction is never explained.

In addition, Board regulations require that "persons with 5 percent interest" be identified with the % of ownership.[2] The Application does not specify ownership percentages as required. The role of each co-applicant and related party should be fully disclosed in the Application as well as the role that party plays in the transaction before the Application is considered by the Board.

2. Necessary Applicants[3]

The disclosure and role of the parties to the Project must be disclosed for another very important reason—to ensure that all necessary parties are co-applicants as required by Section 1110.220 of the Board Rules. [See regulation in Footnote 3 below]. Without knowing the role and ownership of the parties, as discussed above, there is no way to know whether all of the Necessary Parties are co-applicants as required. For example, all of the referral letters state that

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2 **Persons with 5 percent or greater interest in the licensee must be identified with the % of ownership. (Application, p. 2)**

3 **Section 1130.220 Necessary Parties to the Application for Permit or Exemption**

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 [20 ILCS 3960/5]. The following persons shall be the applicants for permit or exemption, as applicable.

a) For construction or modification projects (including projects to establish or change the ownership of health care facilities and including projects to acquire major medical equipment by or on behalf of health care facilities) of one or more existing or proposed health care facilities.

1) the person who will hold and who currently (as applicable) holds the license (or Medicare and/or Medicaid certification if licensing is not applicable) for each facility;

2) the person who has final control of the person who will hold or who currently holds (as applicable) the license (or Medicare and/or Medicaid certification if applicable) for each facility;

3) any related person who is or will be financially responsible for guaranteeing or making payments on any debt related to the project; and

4) any other person who actively will be involved in the operation or provision of care and who controls the use of equipment or other capital assets that are components of the project, such as, but not limited to, fixed equipment, mobile equipment, buildings or portions of buildings, structures such as parking garages, etc.

the Project is a joint venture between the Leo Brown Development Group and Ignite Medical Resorts (see Application pp. 78-87). Should Ignite Medical Resorts be a co-applicant, Ignite McHenry or Ignite McHenry Property? The entity that has "control" over Ignite McHenry must be disclosed in the organization structure. Again, this role is never explained and the Application should not go forward without all necessary co-applicants.

3. Background of Applicants[4]

As part of the application, co-applicants must list all health care facilities it owns. According to the Leo Brown Group website, it has facilities in a number of states, including Illinois (see attached). Similarly, the website for Ignite Medical Resorts lists multiple facilities. The Application, however, shows no facilities for Leo Brown or Ignite Medical Resorts. If either party owns facilities, they should be disclosed; if there are none, the Application should so state.

4. Site Control[5]

The Application does not show that any Applicant has site control of the property. Board regulations require "proof of ownership or control of the site". Indeed, the Application shows that Senior Acquisitions LLC owns the property—but the Application never links this ownership to any applicant. McHenry Senior Partners is designated as the "owner" but there is no evidence of it having control over the site and the Application must address this requirement.

The Application also fails the site control requirement for another reason. The Applicants distinguish between the owner and the operator of the facility, showing McHenry Senior Partners, LLC as the owner and TCO JV, Inc. as the operator. The Application, however, never shows a link between the two. There would most certainly be a lease between the owner and the operator or at least an operating agreement. The Application discloses neither. This important document should be included before the Application can move forward.

5. Financial Ratios and Audited Financial Statements[6]

The Application states that the Leo Brown Group, LLC "is providing the funding for the project" (Application p. 60). The application form clearly states that "The applicant or co-

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4 **BACKGROUND OF APPLICANT**

1. A listing of all health care facilities owned or operated by the applicant, including licensing, and certification if applicable

2. A listing of all health care facilities currently owned and/or operated in Illinois, by any corporate officers or directors, LLC members, partners, or owners of at least 5% of the proposed health care facility.

5 **Proof of ownership or control of the site is to be provided as Attachment 2. Examples of proof of ownership are property tax statements, tax assessor's documentation, deed, notarized statement of the corporation attesting to ownership, an option to lease, a letter of intent to lease, or a lease.**

6 The applicant or co-applicant that is responsible for funding or guaranteeing funding of the project shall provide viability ratios for the latest three years for which **audited financial statements are available and for the first full fiscal year at target utilization, but no more than two years following project completion.** . . . Complete a separate table for each co-applicant and provide worksheets for each.

applicant that is responsible for funding or guaranteeing funding of the project shall provide viability ratios for the latest three years for which **audited financial statements are available."** Incredibly, the application then proceeds to produce financial ratios for the operator, but not the entity that is providing the financing. We find it hard to believe that this omission was merely an oversight. In the prior application the Applicants reference. Project No. 15-044, the Application included audited financial statements for the entity providing financing. Board staff has previously been consistent in requiring this information and should require the audited financial statement of the Leo Brown Group and the financial ration.

Conclusion

This Application omits important information required by Board rules that is necessary for the Board, its staff, and the public to have in its view. If the many omissions are oversights only, then the Application is not yet ready for consideration. If instead, the omissions of withholding of important information was intentional or strategic, the Board should not allow the Application to go forward until there is respect for the review process.

Very truly yours,

Mark Weldler
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815-477-6400

cc: Michael Constantino
Jeannie Mitchell