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

Re: Metroeast Endoscopic Surgery Center (Proj. 20-017)- Technical Comment to State Board Report

Dear Ms. Avery:

Polsinelli represents Metroeast Endoscopic Surgery Center, LLC (the "Applicant"). In this capacity, we are writing in response to the Illinois Health Facilities and Services Review Board's ("HFSRB") findings ("State Board Report") on the Applicant's non-substantive application for permit to add orthopedic surgery services to its existing ambulatory surgical treatment center ("ASTC") located in Fairview Heights, Illinois.

The proposed project is an effort to improve access to the residents of the communities in and around Fairview Heights by providing a lower cost setting for elective, non-emergency surgical procedures to, among other things, meet the requirements and/or goals of third party payors and provide lower out-of-pocket costs for patients. Providing this option is more important than ever during the economic recession created by the pandemic. The St. Louis metropolitan area is unlikely to recover from this recession for several years even after a vaccine is developed and broadly distributed in 2021 or 2022 and this is expected to significantly impair the ability of the public to obtain medical care. As it is, the pandemic has negatively affected most everyone needing care for acute and chronic diseases by delaying that care. As most know, this is disproportionately affecting people of color.

Credentialing orthopedic physicians at the existing surgery center is consistent with core tenets of the Illinois Health Facilities Planning Act of *"improving the financial ability of the public to obtain necessary health services;.... guaranteeing the availability of quality health care to the general public; and maintaining and improving the provision of essential health care services and increase the accessibility of those services to the medically underserved and indigent."* (20 ILCS 3960/1).

Pursuant to Section 6 (c-5) of the Illinois Facilities Planning Act (the "Planning Act"), we submit the following comments.

St. Clair County has a population of 159,000 residents yet patients are outmigrating for ASTC care (e.g., 395 St. Clair patients went to Surgery Center of Centralia and 147 went to Monroe County Surgical Center for this care in 2018.¹ An unknown but anecdotally large number of patients are traveling to Missouri for lower cost ASTC services and specialty care).

¹ IDPH ASTC Profile Data

We acknowledge and appreciate that the State Board Report reflects that there are not currently any ASTCs within the county nor in the 17-mile GSA that offer the surgical specialty proposed to be added at this existing surgery center. Anderson Surgery Center (Permit # 18-031), which is not anticipated to become operational until December 31, 2021, has a proposed site 17 miles from our client's surgery center ("MESC"). Recently, one ASTC closed in Belleville and another one will relocate farther east this year, due to the end of its lease on the old campus of HSHS St. Elizabeth. Since the cost of care within an ASTC is often 75% less than that of a hospital outpatient surgery department, it is vital that the Applicant is able to offer a lower cost, high quality alternative to hospital-based procedures at its existing Fairview Heights location for an additional surgical specialty.

- **Service Accessibility & Unnecessary Duplication/Maldistribution**

This Applicant is seeking a CON permit pursuant to Illinois Administrative Code Section 1110.235 (c) (1) (E) (ii) which states, "beginning January 1, 2018, multi-specialty ASTCs seeking to add additional ASTC services shall apply for a CON permit pursuant to the provisions of this section." Section 1110.235 of the HFSRB rules delineates the applicable criteria for adding surgical specialties. These are exactly the same criteria as those criteria applicable to the establishment of a de novo surgery center. At the beginning of 2018 when these rules became effective to require a CON permit for the addition of surgical specialties to an existing surgery center, our office consulted with HFSRB staff to ascertain how to present a meaningful application for the expansion of surgical specialties given that the rules are not at all oriented toward such a change nor is there a meaningful framework from a health planning perspective on the potential limitation of such expansions. As HFSRB staff knows, such an expansion can easily be accomplished by an expenditure below the capital expenditure minimum applicable to surgery centers (\$3,585,250) and the surgery center environment is a lower cost alternative to the delivery of this service in a hospital. Further, we note that this proposal does not add surgical capacity to the existing ASTC.

Having recently obtained a CON permit to add other specialties, the Applicant based the pending application on its previously submitted CON permit application which was found to meet all the applicable review criteria. The Applicant's Project 19-010, which was approved on June 4, 2019 and also proposed to add surgical specialties (general surgery, plastic surgery and gynecology) at MESC, was found to be in compliance with all relevant provisions of Part 1110 and Part 1120. It was found to have met all of the HFSRB standards in spite of the fact that there was existing capacity within the 17-mile GSA that could accommodate the workload identified within the application. It is important to note that MESC's previous project was not measured against the Service Accessibility or Unnecessary Duplication/Maldistribution criteria.

Despite these facts, the HFSRB staff cited the pending proposal as out of conformance with criteria that have almost never been negatively applied to any of the previous applications that this office or other applicants have submitted to the HFSRB since the pertinent rule change. With this in mind and given the fact that there were no special rules adopted pursuant to which projects for the expansion of surgical specialties should be applied, we disagree with the State Board Report's negative findings on Service Accessibility or Unnecessary Duplication of Services criteria. There is no meaningful health planning construct to apply against a proposal to allow additional types of specialists to perform procedures at a surgery center. Further, hospitals

are not similarly held to the requirement to obtain a CON to credential additional types of specialists at their facilities. There should be a more fair and level playing field that doesn't allow hospitals to stifle competition, especially a safety net provider like the Applicant.

Following is a list of other CON permit applications to add surgical specialties to an existing ASTC since the ASTC expansion of specialties rule. Each was approved to add the specialties requested without negative application of the Section 1110.235(c)(6) or (c)(7) criteria despite similar circumstances such as the existence of other surgery center and hospital providers in their GSA offering the same services. These projects are:

- Carle Surgicenter Danville, (Proj. 18-014),
- Hinsdale Surgical Center, (Proj. 18-036),
- Barrington Pain and Spine Institute (Proj. 18-03 8),
- Ravine Way Surgery Center (Proj. 18-043),
- Chicago Prostate Cancer Surgery Center (Proj. 19-018), and
- Center for Ambulatory Treatment II (Proj. 19-020).

Notably, only one of those surgery centers is anywhere close to on par for being a safety net provider to the extent that MESC is a safety net provider. The application materials for this proposal are replete with evidence that it supports access to services for vulnerable populations receiving Medicaid services. HSHS left the poor communities of Belleville, E. St. Louis and Fairview Heights behind when it left Belleville. MESC continues to operate in Fairview Heights to serve these underserved communities.

- **Opposition Comments**

As a competitor to MESC, HSHS submitted a letter to the HFSRB intending to block this project. This letter cited concerns that the addition of orthopedic surgery at MESC would impact HSHS hospitals' ability to provide safety net services and to cross-subsidize safety net services. While HSHS may be reluctant to compete against a provider that offers at least the same quality of care but at a far lower cost and in a more convenient location, it is misleading to claim that the project would impact HSHS's ability to provide safety net services or that HSHS is any more of a safety net provider than MESC.

If MESC, located 29 miles away from Highland, begins offering orthopedic surgical services, it would have a negligible impact on HSHS's facilities. HSHS's own letter acknowledges that Dr. Ungacta has not performed any surgeries at HSHS's Highland hospital in recent months. In fact, all of his activity has shifted to St. Louis while he awaits credentialing at MESC where he will offer his Illinois patients an in-state option. Further, the two objectors had \$34.9M and \$58.4M in revenue, respectively. Even based on the generous estimates of foregone revenue in their letter, the impact of this project would be nominal especially as demand for orthopedic care rises. It is also important to note that HSHS's letter failed to mention that hospital systems such as HSHS are being protected significantly with a \$175 billion bailout by the federal government under new grants under the CARES Act in the face of the pandemic while ASCs are resuming operations without these protections.

In spite of efforts by HSHS to minimize MESC's charitable mission, the center is unquestionably a safety net provider. MESC has a track record of providing care to indigent populations; however, because it is not a tax-exempt entity, MESC does not track uncompensated care in its books and records nor as a line item in its financial statements. Nonetheless, approximately one of every 10 patients that MESC accepts has no means to pay and is accepted anyway out of moral obligation. Based on the historical scope of its procedures performed, the Applicant estimates that the center constitutes 60% of uncompensated and Medicaid care in the area. It is the largest ASTC provider of care to Medicaid in the area, and will continue to be for years to come. Assuming that moral obligation is what disenfranchised people in this country are due and it is my client's honor to fulfill it.

As a final note, please delete the words "podiatry, pain management and ophthalmology" from page 6 of the Board staff report. Recognizing the need for a broader scope of services in the area served by the surgery center, these specialties were approved at the February HFSRB meeting.

Thank you for your consideration of the Applicant's response to the State Board's findings.

Sincerely,

A handwritten signature in black ink that reads "Kara Friedman". The signature is written in a cursive, flowing style.

Kara Friedman