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HEALTH FACILITIES &
SERVICES REVIEW BOARD

VIA HAND DELIVERY

Courtney Avery
Board Administrator
Health Facilities and Services Review Board
Illinois Department of Public Health
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

Re: MetroSouth Medical Center, Exemption #024-19- Letter in Response to State Board Staff Report

Dear Ms. Avery:

After reviewing the State Board Staff Report ("SBSR") for MetroSouth Medical Center, Exemption #24-019, we have identified several areas of concern that, on behalf of our client the City of Blue Island, we must invite the Board to take note of.

As former Generals Counsel to this Board, we recognize that under the current rules, the Board has limited options with regards to Certificate of Exemption ("COE") applications that have been deemed complete. However, ***the Board certainly has authority to defer consideration of this application*** until the next Illinois Health Facilities and Services Review Board Meeting ("HFSRB") meeting. We invite the Board to consider that option.

After reviewing the SBSR and the project file, it is clear that all of the key terms of the transaction and a complete plan to discontinue the facility are not included in the application. The application having been deemed complete in this case appears to indicate that the minimum threshold of information has been provided. However, having met the minimum threshold does not preclude the Board or its staff from requesting additional information and certainly does not relieve the applicant from responding to any such request. Given the significant issues that have been raised by members of the public, and the unquestionable impact this will have on this community, it is imperative that this be done right. Therefore, we invite the Board and/or its staff to request additional information regarding this application to address those concerns that have been raised to date.

This is too important to rush forward without meaningfully exploring every option and understanding the impact this discontinuation will have on access to care in this community. The applicant can dictate when it files an application, but when a discontinuation occurs it should happen at the timeline deemed proper by the Board - not to suit the financial interests of the applicant. Moreover, it should not be overlooked that the legislature recently changed the rules to

give the Board the authority it needs to ensure appropriate health planning and access to care for those communities that need it most. Discontinuations no longer qualify for the COE process, providing this Board with more of a say in these decisions. Even if this Board cannot stop this process, it still has an important role to play. This Board certainly can fulfill its role of promoting organized and responsible health planning; it can send a clear message to providers who intend to discontinue and thereby create obstacles to accessing healthcare of what this Board considers appropriate information; it can make sure that this Board and the public have the information necessary to know how this closure will impact the community. It is important that this Board ensure that the applicants are taking the appropriate steps in winding down services. It is equally important for the Board to use this opportunity to illustrate its expectations and fulfill its obligation to oversee the healthcare planning process in Illinois.

The strongest reason this Board has to defer this project are the formal complaints made by the Mayor of Blue Island, state legislators and most importantly members of the community. Concerns have been raised that MetroSouth has taken steps to discontinue categories of service within the hospital in advance of any consideration by this Board. These are serious allegations that, if true, would violate Board rules and warrant a full investigation by this Board and the Illinois Department of Public Health. If the applicants have discontinued services in advance of approval from this Board, it would constitute a violation of the Illinois Health Facilities Planning Act that could result in the deferral of this project until that issue is resolved.

Moreover, after reviewing the SBSR, several questions seem outstanding in relation the structure of this transaction. There is no information in the application or the SBSR on how the applicant intends to utilize the land where the facility is located. This facility is an important part of the City of Blue Island and the real estate is centrally located. It will be devastating if this facility is able to discontinue, but that devastation will be further exacerbated if that land remains abandoned and unused to further weigh down the economy. At this point, it is a complete mystery how the applicants plan to utilize the vacant facility if approved to discontinue. There is no indication that applicants have developed or even considered a way to blunt the impact of the discontinuation of this facility, and the effect it will have on the community - despite having spent significant time discussing the adverse financial impact continuing to operate will have on the applicant.

More important than issues of dollars and cents is the notion that this Board should have far more information available to it on what will be the impact caused by this interruption to care. For a Board whose purpose is to ensure meaningful access to care for underserved and indigent communities, when a facility seeks closure due in major part to the increase in having to serve a Medicaid population, there should be a greater understanding of what the impact will be than the applicant's conclusion that this should not adversely affect safety net services. Where is any information or assessment from the EMS system? From the *ex officio* Departments serving this Board, the Illinois Department of Public Health and the Illinois Department of Healthcare and Family Services? This Board is in a position to ask for more information to understand what the real fallout of this decision will be and to press the application as to what steps they are prepared to take to minimize the impact of their decision. The residents of the City of Blue Island deserve nothing less.

Let us be more specific. The SBSR highlights that the ***applicants belief*** the facility is underutilized and that there would be no material impact on the safety net system. However, the application and SBSR only make mention of having mailed certified letters to area facilities. There are so many more steps that could have, and in our opinion should have, been taken. By way of examples:

- Has MetroSouth contacted local public health departments to understand the impact this would have their ability to serve the residents of this community;

- Has MetroSouth made any effort to seek input from the federal Emergency Management Services ("EMS") to determine what effect on their ability to provide services? EMS is an integrated services that provide emergency medical care in coordinate with existing health systems to enhance a community's health and safety;

- Has anyone evaluated the conclusions presented regarding the impact of this closure? The applicant identifies Ingalls Memorial Hospital as a nearby viable option for emergency care. However, the applicant does not mention that between Ingalls and Blue Island is one of the state's largest rail yards which make travel in the area extremely difficult given the constant interruptions by trains traveling through town. The first responders of this community are aware of this issue and highlighted in their public hearing comments.

To discontinue this facility without the benefit of insight from those organizations, regarding issues like this which have been raised by concerned members of the public does seem like the most prudent course of action.

Finally, the SBSR does not have a meaningful opportunity to evaluate recent developments regarding a possible change of ownership of the facility in lieu of discontinuation because the applicants do not provide any information other than a summary statement that says no one wants to purchase the facility. In recent weeks, Quorum has indicated that there is at least one potential buyer for the facility and, we can report that the City itself is exploring ways to finding new owners. Time and space should be allowed to fully explore those options. We believe that deferral of this application would be the most appropriate and prudent course of action.

However, should there be a need to balance the interests of the community with the financial impact upon the healthcare provider, there are other options. This Board has the ability to allow the applicants to temporarily suspend services at the facility while they work with the City and the community to identify an appropriate transition of the facility and the services desperately needed in the community. This would allow for a notable decrease in the costs being incurred by the applicant - but maintain the license intact to allow for a change of ownership if a new operator were identified (rather than having to apply for a full CON to establish a new facility). There is no indication from the application as to whether the applicants have considered other alternatives at the facility, like reducing the number of beds at the facility or transitioning the space to ensure that medical services can continue to be provided in this community.

This Board is not without options. This Board has power and has a purpose and we invite this Board to utilize its power to ensure orderly healthcare planning, even if - perhaps especially if

- the issue is the closure of a hospital. This community deserves to be a meaningful part of this process. Deferral of this project is well within this Board's authority and would create the space necessary to ensure all of the key terms of this transaction are in its hands when they make a decision. We believe the Board should decide what information is necessary and we believe the Board should decide when it votes to allow this facility to close. Just because it will have to happen eventually does not make how it happens unimportant.

We would respectfully request this Board to seek additional input from the applicants, from public health agencies, from the EMS system, and from any other entity it considers necessary before considering this project.

Should you have any questions or need any additional information regarding the project, please feel free to contact us, Mark J. Silberman or Juan Morado. Juan can be contacted via phone at 312-212-4967 or via email at JMorado@beneschlaw.com and Mark via phone at 312-212-4952 or via email at MSilberman@beneschlaw.com.

Respectfully submitted,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP

Juan Morado, Jr.

Mark J. Silberman

cc: George Roate, Project Reviewer
Domingo Vargas, Mayor of Blue Island