

## Constantino, Mike

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**From:** Anne Cooper [ACooper@Polsinelli.com]  
**Sent:** Thursday, June 02, 2011 10:54 AM  
**To:** Constantino, Mike  
**Subject:** Southern Illinois Surgery Center (Proj. No. E-001-11)  
**Attachments:** R Osman Response to M Ahmad Comments (06-2-2011).pdf<sup>a</sup>.pdf

Mike,

Attached please find our comments to Dr. Ahmad's letter to the Health Facilities and Services Review Board dated May 26, 2011.

Please let me know if you have any questions or need any additional information.

Anne



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June 2, 2011

**FEDERAL EXPRESS  
ELECTRONIC MAIL**

Mr. Dale Galassie, Chair  
Illinois Health Facilities and Services Review Board  
525 West Jefferson Street, 2nd Floor  
Springfield, Illinois 62761

**Re: Southern Illinois Surgery Center (Proj. No. E-001-11)  
Response to May 26, 2011 Opposition Comment from Dr. Maqbool Ahmad**

Dear Mr. Galassie:

This office represents Cirurgia Centro, LLC ("Cirurgia") and Ronald E. Osman ("Mr. Osman") in the pending application for an exemption for the change of ownership of the Surgery Center of Southern Illinois (the "Marion Surgery Center"). This application is currently pending with the Health Facilities and Services Review Board (the "CON Board"). I am writing in response to the issues raised in Dr. Maqbool Ahmad's ("Dr. Ahmad") letter of opposition dated May 26, 2011 (the "May 26, 2011 Opposition Letter"). This letter is not intended to provide supplemental information but is written to clarify the record.

The issues raised by Dr. Ahmad in the May 26, 2011 Opposition Letter were not new and were fully addressed at the April 5, 2011 public hearing and in our written response to public comments dated May 24, 2011 (the "May 24, 2011 Response Letter"). Rather than repeat our detailed responses to the allegations, we merely summarize our prior response and direct the CON Board to the more detailed description of events found in the transcript of the April 5, 2011 public hearing and our May 24, 2011 Response Letter.

1. FALSE ASSERTION: Approval of this project will reduce access to healthcare and require patients to travel outside their community to obtain necessary care.

In the May 26, 2011 Opposition Letter, Dr. Ahmad alleges approval of the change of ownership of the Marion Surgery Center will reduce access to health care in Marion and require patients to travel outside of the community for surgery. This statement is deceitful. Dr. Ahmad and his staff are already currently steering patients to Mount Vernon, Illinois which is 45 minutes away from Marion. Ever since Dr. Ahmad established a competing surgery center in Mount Vernon over a year ago, he and his practice affiliates' have aggressively steered these patients to

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his surgery center resulting in Marion patients traveling outside of the Marion community for services. As stated in the May 24, 2011 Response Letter, in Spring of 2010 when the Mt. Vernon Eye Center opened, the Marion Eye Center staff began advising patients that the Marion Eye Center physicians no longer performed procedures at the Marion Surgery Center and they would have to travel to the Mt. Vernon Eye Center for surgery.

2. FALSE ASSERTION: Marion Eye Centers will not continue to perform surgery at the Marion Surgery Center if the change of ownership is granted.

Importantly, in the May 26, 2011 Opposition Letter, Dr. Ahmad only provides information on procedures performed by his group at the Marion Surgery Center from 2005 through 2009, and fails to include any 2010 data. This is a deliberate attempt to mislead the CON Board into believing the Marion Eye Physicians currently perform the vast majority of the procedures at the Marion Surgery Center and to imply access would be severely curtailed if the change of ownership of the Marion Surgery Center is approved when in fact, patients have been steered to Dr. Ahmad's wholly owned surgery center for over a year.

3. FALSE ASSERTION: The applicant failed to provide a copy of the Disclosure Letter to the CON Board.

Dr. Ahmad's contention that the application for exemption is incomplete and cannot be properly evaluated is incorrect. On May 9, 2011, CON Board staff contacted Mr. Osman requesting a copy of the Disclosure Letter referenced in the application for exemption, and it was promptly supplied on that same day and then again on May 26, 2011. All required information for the application for exemption has been submitted, and, as of today's date, all requests for additional information from CON Board staff have been promptly addressed.

4. FALSE ASSERTION: Ownership, operation and control of the surgery center constitutes the practice of medicine and violates the Corporate Practice of Medicine Doctrine.

Dr. Ahmad's contention in his May 26, 2011 Opposition Letter that operation and control of the Marion Surgery Center constitutes the corporate practice of medicine is misplaced and has no basis in Illinois law. As discussed during the April 5, 2011 public hearing, while the Illinois Corporate Practice of Medicine Doctrine prohibits a person without a valid medical license from practicing medicine, it does not prohibit non-physician ownership of a surgery center. (April 5, 2011 Public Hearing Transcript p. 10). In fact, Section 22.2 of the Medical Practice Act, which allows a licensee to practice medicine through or within any form of legal entity authorized to do business in Illinois and permits fee splitting in limited circumstances, contemplates non-physician ownership of surgery centers:

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Nothing contained in this Section [22.2] prohibits a licensee under this Act from practicing medicine through or within any form of legal entity authorized to conduct business in this State or from pooling, sharing, dividing or apportioning the professional fees and other revenues in accordance with the agreements of the entity provided . . . the entity is allowed by Illinois law to provide physician services or employ physicians such as a licensed hospital or hospital affiliate or licensed ambulatory surgical treatment center owned in full or in part by Illinois-licensed physicians.

225 Ill. Comp. Stat. 60/22.2(c)(3).

Finally, there is no prohibition on non-physician ownership in the Ambulatory Surgical Treatment Center Act and related rules. See 210 ILCS 5/7 and 77 IAC 205.210. In fact, to the contrary, there is an Illinois statute which prohibits physician referrals to physician owned surgery centers except in limited circumstances. The Illinois Health Care Self-Referral Act, 225 ILCS 47/1 et seq., prohibits a physician from making referrals to a health care facility which is owned, in whole or in part by the physician, unless that physician uses the surgery center as an extension of his practice.

Importantly, a surgery center merely provides the facility, equipment and non-physician staff that allows physicians to perform surgery. The owners of surgery centers do not make or influence treatment decisions. Those decisions are made by the patient and his or her physician. Moreover, surgery centers are separately licensed from a medical practice and have their own set of IDPH requirements designed to ensure the safety of the patients who utilize the surgery center. (April 5, 2011 Public Hearing Transcript p. 11). In summary, surgery centers do not engage in the practice medicine; they do not diagnose or treat physical ailments or recommend or prescribe treatment.

5. FALSE ASSERTION: The Surgery Center should not be entrusted to Ronald E. Osman.

Finally, Dr. Ahmad argues that Mr. Osman's prior conduct in a qui tam action against Dr. Ahmad should be considered by the CON Board as it relates to his character and fitness. As previously stated in our May 24, 2011 Response Letter, the Illinois Attorney Registration and Disciplinary Commission confirmed that no action was warranted against Mr. Osman in the matter of U.S. ex rel. Ryll v. Ahmad. (May 24, 2011 response Letter p. 1). Moreover, Mr. Osman is known to be an active and upstanding member of the community and he has support from the community for the acquisition of the Marion Surgery Center.

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In summary, Dr. Ahmad's claims against Mr. Osman are misleading and baseless and should have no bearing on the CON Board's decision on whether to grant an exemption for the change of ownership of the Marion Surgery Center.

Thank you for your consideration of our response to Dr. Ahmad's opposition comments. If you have any questions or need any additional information, please feel free to contact me.

Sincerely,



Kara M. Friedman

KMF:amc

cc: Courtney Avery  
Mike Constantino  
Ronald E. Osman