

Constantino, Mike

From: Silberman, Mark J. [MJSilberman@duanemorris.com]
Sent: Tuesday, June 07, 2011 4:58 PM
To: Constantino, Mike
Subject: Fw: Message from "RNPF3F1D3"
Attachments: 20110607151910407.pdf

Mike,

Can you verify that you received this? My assistant will send, as well.

Mark

----- Original Message -----

From: CH36thFlr_Rm053@duanemorris.com [mailto:CH36thFlr_Rm053@duanemorris.com]
Sent: Tuesday, June 07, 2011 03:19 PM
To: Silberman, Mark J.
Subject: Message from "RNPF3F1D3"

This E-mail was sent from "RNPF3F1D3" (Aficio MP 6001).

Scan Date: 06.07.2011 15:19:10 (-0400)
Queries to: CH36thFlr_Rm053@duanemorris.com

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

Confidentiality Notice: This electronic mail transmission is privileged and confidential and is intended only for the review of the party to whom it is addressed. If you have received this transmission in error, please immediately return it to the sender. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege.

MARK J. SILBERMAN
DIRECT DIAL: 312.499.6713
PERSONAL FAX: +1 312 277 6957
E-MAIL: MJSilberman@duanemorris.com

www.duanemorris.com

June 7, 2011

BY HAND DELIVERY

Illinois Health Facilities and Services Review Board
525 West Jefferson St., Second Floor
Springfield, IL 62761

NEW YORK
LONDON
SINGAPORE
LOS ANGELES
CHICAGO
HOUSTON
HANOI
PHILADELPHIA
SAN DIEGO
SAN FRANCISCO
BALTIMORE
BOSTON
WASHINGTON, DC
LAS VEGAS
ATLANTA
MIAMI
PITTSBURGH
NEWARK
BOCA RATON
WILMINGTON
CHERRY HILL
PRINCETON
LAKE TAHOE
HO CHI MINH CITY

Re: **Opposition to Application for Exemption for Change of Ownership
Surgery Center of Southern Illinois (Project E-001-11)**

Members of the Board:

The pending Change of Ownership Exemption ("COE") is not about whether or not Ronald Osman ("Mr. Osman") is a wealthy businessman. It is not about transferring control to Dr. Maqbool Ahmad ("Dr. Ahmad"). It is not about the lack of trust Dr. Ahmad has for Mr. Osman or the animosity between this lawyer and this doctor. Despite the recent flurry of information, it is not about allegations of past wrongdoing, current wrongdoing, or future wrongdoing. While Dr. Ahmad vehemently denies any wrongdoing of any kind, he understands that consideration of this COE should turn on one question:

How will it affect access to healthcare in Marion?

Let us remove the animosity between Mr. Osman and Dr. Ahmad. Let us remove the challenges to honesty and credibility, the posturing, the lawyering, and the rhetoric. What do we have left?

We have the voices of over 2,000 members of the public who oppose this project.

Mr. Osman seeks to distract the Board from these 2,000+ letters; each one individual, handwritten, thoughtful; each one prepared and submitted by actual consumers of healthcare from this community; each one reflecting real and legitimate concerns regarding the impact this proposed COE will have on their access to healthcare.

How does Mr. Osman seek to discount their importance? Mr. Osman claims these 2000+ letters (approximately 2,285) were obtained "through threats that the Doctors will withhold medical services...". Whether it is animosity, passion, or a disregard for the truth that produced such an audacious, albeit patently false, allegation, we are unwilling to lower ourselves to this level. The

Health Facilities and Services Review Board
June 7, 2011
Page 2

letters Dr. Ahmad sent to his patients speak for themselves. So do the letters from the public. They present a simple message with uncontested clarity.

If the COE is granted, Marion Eye Centers will cease providing any services at the Surgery Center of Southern Illinois and that will detrimentally effect people's access to necessary healthcare.

The voice of the public warrants being heard. We remain confident the Board will afford these public comments the consideration they are due, as is their duty. It is imperative the Board hear the voices and consider the concerns of the consumers of healthcare because it is *these people* the Board was created to protect and serve.

The inquiries that Dr. Ahmad and the physicians from the Marion Eye Centers made of their patients were not the only inquiries they made. They also asked other local physicians if they too would be concerned if the Surgery Center of Southern Illinois were owned, operated, and controlled by a non-physician. Their response was clear.

Over 75 physicians from the community presented letters voicing their opposition to this project.

Some physicians expressed concern about an attorney owning a surgery center. Others voiced reluctance to refer any patient to a surgical center owned, operated, and controlled by any non-physician. The one area in which everyone, patients, doctors, and the public alike, agreed.

Access to healthcare is improved and the community is better served if Marion Eye Centers continues providing care in Marion.

Mr. Osman raised complaints that since Dr. Ahmad opened his Mt. Vernon surgery center there has been a 65% drop in the procedures performed at the Surgery Center of Southern Illinois. We do not have information with which to challenge these statistical claims and, candidly, wonder how Mr. Osman, who does not yet own the surgery center, was able to obtain such information. Regardless, the creation of the Mt. Vernon facility was undertaken with full approval of this Board and a project in which Dr. Ahmad acknowledged that procedures would be drawn from those historically performed at the Surgery Center of Southern Illinois. However, for the moment, let us assume that Mr. Osman's numbers are correct.

Nothing better illustrates the devastating impact that would result from Dr. Ahmad and Marion Eye Centers ceasing to perform any future procedures at the Surgery Center of Southern Illinois.

Despite Mr. Osman's protestations to the contrary, there is nothing nefarious about Dr. Ahmad performing procedures at the Mt. Vernon facility. Consider that since December 2010 he has been involved in a dispute yielding litigation with the party that controls and holds majority

ownership in the Surgery Center of Southern Illinois. Marion Eye Centers' physicians have expressed concerns stemming from current staff's loyalty to Mr. Osman and the potential effect it might have on patient care. Every aspect of the decision to perform procedures away from the Surgery Center of Southern Illinois is well reasoned, justified, and designed to allow patients unfettered and uninterrupted access to quality care.

That has not stopped Mr. Osman from claiming it was a calculated effort to decrease the "purchase price" of the facility. If that were true, is not Mr. Osman himself benefitting from this "calculated effort," as he is now the proposed purchaser? Since Mr. Osman is stepping in and purchased the Surgery Center of Southern Illinois out from under Dr. Ahmad, it is actually Mr. Osman who is obtaining the "benefit of the bargain."

Mr. Osman's statistical information verifies the importance (historically and prospectively) the procedures performed by the Marion Eye Centers has upon the viability of the Surgery Center of Southern Illinois. Consider that simply moving a percentage of the Marion Eye Center's procedures away from the Surgery Center of Southern Illinois has converted an otherwise successful facility into an underutilized facility that, if the trends continue, would be in danger of being involuntarily discontinued by the Board. See, 77 Ill. Admin. Code 1130.140 (Discontinuation includes a determination by HFPB that a category of service is not operating at utilization standards/target occupancy rates on average for any two-year period).

If, as previously represented, there will be no changes in the scope or functional operation of the facility, it does not appear to have enough procedures to remain a viable facility. Whether Marion Eye Centers perform 67% of all procedures at the Surgery Center of Southern Illinois (per Mr. Osman's statistics) or 85% - 97% of all procedures performed (per the Board's statistics) it is clear that the physicians who comprise the Marion Eye Centers are necessary for the future of the Surgery Center of Southern Illinois. Before approving this COE the Board must know that approval of this Project will result in the Marion Eye Centers leaving this facility, will damage the continued viability of this facility to serve this community, and will decrease access to healthcare.

Mr. Osman's Claim of Entitlement is Presumptuous and Incorrect

In his statements at the public hearing, in the form letter he had colleagues and business partners submit, and again in written comments, Mr. Osman has claimed to be **entitled** to approval. Mr. Osman, through his attorney, claims "approval of an application for exemption is non-discretionary provided the information required by the State Board's rules is submitted." *April 5, 2011 Public Hearing*. She went on to proclaim the project is "entitled to the exemption. This was confirmed by the State Board's staff which deemed the application complete after its submission." *Id.* Consider the crux of what Mr. Osman is claiming:

- According to Mr. Osman, the public hearing process serves no purpose;
- According to Mr. Osman, the letters of support and opposition are pure folly;

Health Facilities and Services Review Board
June 7, 2011
Page 4

- According to Mr. Osman, it is the staff, not the Board, that approves this project;
- According to Mr. Osman, the Board serves no purpose but to rubber-stamp approval of this COE;
- According to Mr. Osman, the Board does not possess the authority to consider the concerns raised by the public
- According to Mr. Osman, the Board does not possess the authority to deny a project that would result in decreased access to healthcare;
- According to Mr. Osman, he is *entitled* to purchase the Surgery Center of Southern Illinois.

We disagree. We believe the Board has not only the authority but the duty to maintain access to healthcare for this community. The Board serves a fundamentally important role to achieve this result. Illinois made the decision that healthcare was too important to leave to the free market. You don't get to buy, build, or close a healthcare facility just because you want to.

Having money and business acumen does not entitle you to bypass this Board.

This Board, at all times, retains authority of whether or not to approve a project. The Board is not a ministerial board with a checklist of requirements. The Board serves a purpose, has the authority, and a responsibility it is bound to uphold. Comments from the public serve a purpose – as does the public hearing – to keep the Board members apprised of what the consequences of their decisions will be. The Board's own regulations require that the Board "shall consider ... public comment and public hearing testimony" when taking action on a project. 77 Ill. Admin. Code. 1130.655.

If it were otherwise, why did 300+ people appear at the public hearing to oppose this project; why did 2000+ people write letters of opposition; why did over 75 physicians voice their opposition to this project?

Remember, we are not asking the Board to transfer ownership to Dr. Ahmad. We are asking the Board to maintain the *status quo*. The majority of concerns between Marion Eye Centers and the Surgery Center of Southern Illinois stem from one thing: the interference of Mr. Osman.

We appreciate the Board staff's efforts in obtaining the Disclosure Letter which was withheld by Mr. Osman when this application was submitted. The disclosure letter addresses Mr. Osman's willingness to indemnify SCA for any litigation resulting from SCA's breach of the Letter of Intent that had been executed between SCA and Dr. Ahmad on December 2, 2010.

The Disclosure Letter between SCA and Mr. Osman was executed January 26, 2011. Mr. Osman submitted the current application on January 27, 2011. SCA did not terminate its Letter of Intent with Dr. Ahmad until January 28, 2011. This timeline is important because it reveals

Health Facilities and Services Review Board
June 7, 2011
Page 5

the impropriety in how this project came into being. It is improper and against public policy to utilize indemnification as an inducement to encourage a party to commit future improper acts.

Nevertheless, Mr. Osman offered and agreed to indemnify SCA in an effort to induce SCA to sign a contract with him and terminate the agreement with Dr. Ahmad. This dispute is the subject of independent litigation ongoing in Marion, Illinois. However, it is important for the Board to have this information and it should have been presented by Mr. Osman originally.

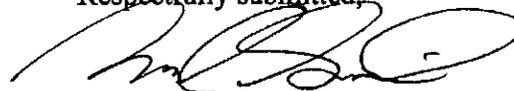
It is convenient and curious that the Disclosure Letter is the single portion of the contract that was omitted from Mr. Osman's submission to this Board.

Once Mr. Osman's involvement and influence is removed, the community can return to the *status quo* which allows the residents of Marion to obtain access to quality healthcare in their own community. There can be little doubt that the thousands of patients who took the time to oppose this project – because it would cost the community access to Dr. Ahmad and Marion Eye Center – will travel out of their community in pursuit of the quality healthcare they can obtain there today. This Board should not approve a COE which will makes patients seek healthcare elsewhere.

The status quo provides better access to healthcare than would result from approval of the COE.

We, therefore, respectfully request this Board deny the pending Change of Ownership Exemption. Doing so will ensure the people of Marion continue to have access to quality healthcare, where approving this COE will unquestionably and irrevocably harm access to care in this community.

Respectfully submitted,



Mark J. Silberman