

Holland & Knight

131 South Dearborn Street | Chicago, IL 60603 | T 312.263.3600 | F 312.578.6666
Holland & Knight LLP | www.hklaw.com

Clare Connor Ranalli
(312) 578-6567
clare.ranalli@hklaw.com

July 9, 2012

RECEIVED
JUL 12 2012
HEALTH FACILITIES &
SERVICES REVIEW BOARD

VIA EMAIL AND U.S. MAIL

Ms. Courtney Avery and Mr. Frank Urso
Illinois Health Facilities and Services Review Board
525 W. Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: CON Project No: 12-051(DMG/Rush University Medical Center MOB Project)
Potential Referral to Compliance at July 2012 Meeting

Dear Ms. Avery and Mr. Urso:

This will confirm I have been retained by Rush University Medical Center ("RUMC") with respect to its participation as a co-applicant on the CON permit application (the "Application") for the above referenced project. I provide the below information, hoping it may be helpful, and with the desire that you share it with the HFSRB prior to or during Executive Session at the upcoming July 23/24, 2012 meeting, *if* the project is discussed in the compliance context. I understand that at this point, it is undetermined whether the matter will be referred for compliance. I respectfully assert that it should not be, for the following reasons.

Ms. Cheryl Murer's correspondence dated February 10, 2012 on behalf of DuPage Medical Group ("DMG") is very detailed and reflects a number of reasons that mitigate against a compliance referral. To avoid redundancy, I will not reiterate the facts and points made in that correspondence.

DMG and RUMC have acquiesced to the position of HFSRB staff and legal counsel by filing the Application, despite continuing good faith questions about whether it is required. From RUMC's perspective, these good faith questions include, first, whether a CON is required relative to the acquisition by DMG of major medical equipment (the linear accelerator) for purposes of diagnosis and treatment of cancer patients. The rules and regulations pertaining to the changes made to the Health Facilities Planning Act (the "Act") in June of 2009 that dramatically impacted the CON process with respect to a person's acquisition of major medical equipment are difficult and complex, particularly in light of the clear statutory language that nothing within the Act is intended to regulate a physician office practice.

Second, RUMC initially learned of the position of Board staff and legal counsel that the project is considered "by or on behalf" of a health care facility in March of 2012. We understand this conclusion is due to RUMC's involvement in leasing space in the building and entering into an

affiliation agreement with DMG regarding clinical services (including infusion therapy). Despite RUMC's significant questions about this characterization, the Application was filed with RUMC as a co-applicant shortly thereafter.

RUMC does not own or operate the building or the linear accelerator. Its lease for space at the Lisle building owned by DMG relates to its provision of infusion therapy, which is neither integral to nor necessary to (or in any way impacted by) the use of the linear accelerator. A cancer patient may, during the course of treatment of his disease, require radiation oncology (e.g. the linear accelerator), infusion therapy/chemotherapy, laboratory and pathology services, physician office visits and imaging screenings. These services are frequently combined in one location to make the complex and varying medical treatment received by cancer patients as integrated, seamless and convenient as possible. In this instance DMG is providing almost all of these services, but for infusion therapy. RUMC and DMG are affiliating to provide integrated clinical services at the Lisle building where RUMC leases space.

I am reiterating these points only to drive home that the CON issues associated with the above arrangement(s), the construction and ownership of the building, the leasing of space, the operation of equipment and provision of services are complex. RUMC certainly had no intent to circumvent the CON process. It proceeded in good faith with the arrangement to lease space to provide infusion therapy and to collaborate relative to the clinical services offered by physicians at the Lisle building in order to provide a coordinated approach to care that leads to the best outcomes. RUMC proceeded believing that a CON was unnecessary. Shortly after it became aware of the HFSRB's position in March of 2012 that a CON was required, one was filed.

We sincerely hope that HFSRB understands RUMC would not intentionally disregard its rules. As it has done in the past, it will in the future approach the Board and Staff collaboratively and proactively regarding the CON process. In the meantime do not hesitate to contact me, or Anne Murphy, if you believe we might provide further assistance in resolving this matter without the need for a compliance referral. We look forward to presenting the Application, and addressing any of the Board's questions in September.

Thank you for your consideration.

Very truly yours,

HOLLAND & KNIGHT LLP


Clare Connor Ranalli

CCR:mjy

cc: Anne Murphy, General Counsel and Senior Vice President for Legal Affairs
Mike Constantino
Cherilyn Murer