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HEALTH FACILITIES &
SERVICES REVIEW BOARD

October 10, 2012

Via UPS and E-Mail

Ms. Courtney Avery
Mr. Mike Constantino
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

RE: CON Project 12-073 Comment Letter

Dear Ms. Avery and Mr. Constantino:

This letter provides additional information in support of the certificate of need ("CON") permit application for MetroSouth Medical Center ("MetroSouth") to establish a 14 bed acute mental illness ("AMI") category of service (Project 12-073). Specifically, this letter responds to several points raised by Little Company of Mary Hospital and Health Care Centers ("LCM") in a letter dated August 15, 2012 which was not directed to the application itself, but simply to MSMC's request for an impact statement from LCM. We ask the Illinois Health Facilities and Services Review Board ("State Board") to note the following points.

(1) Full Compliance with State Board Rules is Not Required for CON Applications

LCM argues that MetroSouth's CON application should be denied because the application "violates" a number of the State Board's rules. However, LCM fails to recognize that CON applicants are not required to have full compliance with the State Board's rules in order to obtain a CON permit. Section 1130.660 of the State Board's rules provides that the "failure to meet one or more of the review criteria, as set forth in 77 Ill. Adm. Code 1110 and 1120, shall not prohibit the issuance of a permit." In fact, Illinois courts have upheld the State Board's ability to grant a CON permit to an applicant even though relevant review criteria are not met. For example, in *Provena Health v. Health Facilities Planning Board*, an Illinois appellate court declared that State Board members are "not bound by the Department of Public Health's findings, and must make its own decision based on the evidence in the record." See 765 N.E.2d 1187 (Ill. App. Ct. 1st Dist. 2002).

As a general rule, most CON permit applications have at least one area of non-compliance. Nevertheless, the State Board frequently approves CON applications where one or more of the applicable review criteria are not met. In such cases, State Board approval is often granted because board members generally consider all relevant facts, and regularly do not give one review criterion more weight than another review criterion. Accordingly, it is improper for LCM to suggest that MetroSouth's CON application should be rejected simply because of non-compliance with some of the relevant review criteria without fully considering the totality of the project purpose and application.

(2) Project Need Not Determined Solely by Bed Need Inventory and Utilization of Existing Providers

LCM improperly suggests that MetroSouth's CON application should be rejected simply because Health Service Area VII, Hospital Planning Area A-04, has a stated excess of 60 AMI beds and existing AMI providers within thirty minutes of the proposed AMI site are not meeting the State Board's target utilization standards. If these two data points were the only relevant factors considered, the State Board would reject a much higher percentage of introduced CON applications. However, the State Board often looks beyond bed need and utilization data when considering pending CON applications.

Bed need and utilization data provide only two points of information for State Board members to consider. State Board members are allowed to, and often do, consider other pertinent factors when making a decision to approve a pending CON application. Importantly, any information that is included in the project record may be considered by State Board members when they are deciding how to vote on a given CON application.

In the present case, a salient factor for the State Board to consider is the widely-reported need for geriatric mental health services in Illinois and across the nation. As noted by MetroSouth in the CON application at pages 57 through 74, an unprecedented number of aging baby boomers will begin accessing the nation's health care system -- a system which by many accounts is not ready to meet the demand that will arise in the coming years as the baby boomer generation ages. Furthermore, many independent studies show that geriatric mental health care is woefully inadequate. MetroSouth's CON application is intended to address this growing need. Information supporting this point and contained in MetroSouth's application is directly relevant to project need, and clearly falls within the scope of information that the State Board may consider when determining whether the proposed project is needed.

(3) State Board May Consider Subcategories of AMI Services

LCM is correct that the State Board does not recognize subcategories of AMI services in its rules. However, history shows State Board members understand that all AMI beds are not the same and take into account that AMI providers offer different categories of mental health services. Historically, the State Board has approved CON applications where the applicant proposed to establish a particular sub-specialty that was not being offered or met by existing

providers. For example, in 2010, the State Board granted a CON permit to Roseland Community Hospital to establish an adolescent-focused AMI unit because the applicant demonstrated a need for this specific type of service. Here, the hospital was granted a CON even though several existing, non-focused AMI providers in the same area were operating below the target occupancy standard (see Project 09-063, which was approved in a service area similar to MetroSouth's proposed service area).

(4) LCM Improperly Suggests that CON Application is Incomplete

LCM's statements that MetroSouth did not identify the names or patient referral information of referring physicians, or indicate patient origin information for the proposed AMI unit, are misleading. LCM's statements suggest that MetroSouth's impact letter failed to include certain information that would enable LCM to fully analyze the impact of the proposed project. However, CON impact letters are not meant to provide detailed information.

As required by the State Board's rules, MetroSouth mailed concise, one-page impact letters to all AMI providers within thirty minutes of the proposed project's site. Consistent with the State Board's rules, the impact letter had only two purposes: (1) to provide notice to the area's existing AMI providers of an impending CON project that would be filed by MetroSouth and (2) to solicit responses from the area's existing AMI providers that state, in their opinion, whether the proposed project will have an adverse impact on their health care facility. Historically, impact letters are not intended to provide detailed information of a project to an area's existing providers. Instead, existing providers are allowed to review and comment on filed CON permit applications. However, LCM's letter improperly suggests that MetroSouth failed to include vital information in the impact letter. On this point, LCM's argument is without merit.

(5) Patient Referral Information is Provided in CON Application

It is possible that LCM meant to comment on the CON permit application rather than the impact letter. If so, LCM's claims are incorrect as the CON permit application provided all required information regarding physicians, patient referrals and patient origin data. The detailed information sought by LCM is provided in the application, specifically, the relevant information can be found in the application at pages 98 through 109. The information provided therein is fully compliant with the State Board's requirements. Moreover, the information is readily available to LCM on the State Board's website. Accordingly, LCM does not raise a valid point of opposition in its August 15 letter.

(6) CON Application Filed Before LCM Submitted Opposition Comments

MetroSouth's CON permit application was deemed complete on August 8, 2012 and was posted on the State Board's website on the same date. The completeness designation and web posting occurred one week before LCM's opposition letter was drafted on August 15, 2012, which means that the complete CON permit application, including all the information sought by LCM, was available at the time LCM drafted its opposition letter. Therefore, LCM is incorrect in

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stating that the information necessary to analyze the impact was not available at the time it drafted its opposition letter. Furthermore, LCM is incorrect to state that it is "inconceivable" that MetroSouth would be able to show that the AMI unit will not adversely affect the utilization of existing providers. LCM does not account for the anticipated population growth of the baby boomer generation, nor does LCM account for this generation's mental health needs in the coming years.

MetroSouth's proposed AMI unit is needed. Ample evidence showing a need for the project is provided throughout the CON application. We respectfully request State Board approval for Project 12-073.

Very truly yours,

Holland & Knight LLP


Clare Connor Ranalli

CCR:mjy

cc: Enrique Beckmann, M.D.