

# Holland & Knight

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June 18, 2013

## VIA U.S. MAIL & ELECTRONIC MAIL

Mr. Frank Urso  
Deputy Chief Counsel  
Illinois Health Facilities and Services Review Board  
122 South Michigan Avenue, 7<sup>th</sup> Floor  
Chicago, Illinois 60605

**Re: Technical Assistance Meeting on Thursday, June 6, 2013  
Preferred SurgiCenter, LLC (Project 13-007)**

Dear Mr. Urso:

Pursuant to the Illinois Health Facilities Planning Act, 20 ILCS 3960/4.2, and related rules at 77 Ill. Adm. Code § 1130.620(a)(2), technical assistance may be provided by the staff of the Illinois Health Facilities and Services Review Board (the "State Board") to a certificate of need ("CON") permit applicant. When such assistance is provided after a CON permit application has been deemed complete, a written record of any communication between State Board staff and the applicant must be prepared and made part of the public record. This letter documents our technical assistance meeting held via teleconference on Thursday, June 6, 2013, which addressed several matters related to the CON permit application of Preferred SurgiCenter, LLC (the "Applicant").

The following persons participated in the technical assistance meeting: (1) Frank Urso, Deputy Chief Counsel; (2) Mike Constantino, Chief of Project Review; (3) George Roate, State Board Staff, (4) Jeffrey Mark, CON Consultant; and (5) Joseph Hylak-Reinholtz, legal counsel for the Applicant. We discussed the following matters:

1. Evidence Needed to Satisfy State Board Review Criteria 1120.120 and 1120.130. Specifically, we discussed the letter submitted by Citibank, which was included in the CON permit application and intended to satisfy the State Board's documentation requirements required by rules 1120.120 and 1120.130. We discussed the Citibank letter and why State Board staff did not deem it satisfactory. We asked State Board staff whether the inclusion of certain detailed information in the letter would be sufficient and result in a positive finding for these two review criteria. For example, we asked State Board staff whether a letter documenting that the Applicant has opened a bank account with a sufficient amount of funds to complete the project, and where such funds will be dedicated solely to the project and held in escrow until the CON process is completed, would be an acceptable form of evidence to satisfy this

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criterion. State Board staff indicated that a letter of this specificity would likely be sufficient.

2. Evidence Needed to Satisfy State Board Review Criterion 1110.1540(f). We addressed State Board review criterion 1110.1540(f) during the meeting. This criterion provides that a CON permit applicant can demonstrate the need for a new surgery center by satisfying one of four independent review criteria found at subparts 1110.1540(f)(1) through (f)(4). We focused our discussion on subpart (f)(3), which provides that the State Board can grant a CON permit if the applicant can provide evidence showing how the proposed surgery center will improve access to care. In this context, we discussed two studies that were provided by the Applicant in the CON permit application. State Board staff indicated why those two studies were not able to satisfy this review criterion and provided examples of the type of evidence that would satisfy this review criterion (e.g., evidence specific to the proposed geographic service area rather than general, non-GSA specific evidence).
3. Modification of the Project. We proposed a modification of the project that would reduce the number of proposed treatment rooms from 5 down to 4, add the obstetrics/gynecology category of service, and replace the pain management category of service with orthopedics. State Board staff confirmed that these were allowable modifications to the project, and when taken together, would be classified as a Type A modification. State Board staff added that such designation will trigger another public notice period. We also informed State Board staff that the Applicant plans to submit new physician referral letters and also replace some of the existing physician referral letters to reflect the changes in the forthcoming modification. We also discussed a possible offer by the Applicant to accept a CON permit with conditions, whereby the Applicant would agree to come before the State Board for a CON permit if the Applicant wants to add one or more surgical categories of service (under the State Board's current rules, the granting of a CON permit for five categories of service would make the proposed surgery center a multi-specialty center, a designation that would not require the permit holder to obtain State Board approval before adding new surgical services in the future). State Board staff did not suggest that making such an offer would impact the State Board's decision to approve or reject the project.
4. Public Participation Following the Issuance of an Intent to Deny. We confirmed that written public comments are allowed from the date of the technical assistance meeting up to twenty days before the project is set to be heard again by the State Board. State Board staff noted its intention to change the submission process, which would require all comments to be filed in written form rather than electronically. The Applicant's representatives acknowledged the change in the public comment submission process.

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Upon receipt of this summary letter, please let me know if you have questions. If necessary, please contact me by e-mail at [jhreinoltz@hklaw.com](mailto:jhreinholtz@hklaw.com) or phone at (312) 715-5885.

Thank you very much for taking the time to meet with Mr. Mark and myself to discuss these important matters.

HOLLAND & KNIGHT LLP



Joseph Hylak-Reinholtz

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