



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

69 West Washington Street, Suite 3500 • Chicago, ILLINOIS 60602 • (312) 814-5418

September 11, 2015

Kara Friedman
Polsinelli
161 North Clark Street
Suite 4200
Chicago, Illinois 60601

Re: Hinsdale Surgical Center, LLC
Permit No. 14-034
HFSRB No. 15-02

Dear Ms. Friedman:

Enclosed, please find a copy of the formal Notice of Intent to Impose a Fine in the above-referenced compliance matter for your records. The parties fully executed the consent agreement and Hinsdale Surgical Center, LLC paid the fee due under the Agreement. Therefore, if the final cost reported for the project does not exceed \$11,153,952, no further action is required.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeannie D. Mitchell", with a long horizontal line extending to the right.

Jeannie D. Mitchell

cc: Courtney Avery
Juan Morado Jr.
Mike Constantino

HEALTH FACILITIES AND SERVICES REVIEW BOARD
STATE OF ILLINOIS

Health Facilities and Services Review Board,

Complainant,

vs.

Hinsdale Surgical Center, LLC,
Permit No.14-034

Respondent.

Docket No. HFSRB #15-02

**NOTICE OF INTENT TO IMPOSE A FINE,
NOTICE OF AN OPPORTUNITY FOR AN ADMINISTRATIVE HEARING AND
NOTICE OF AN OPPORTUNITY TO APPEAR BEFORE
THE HEALTH FACILITIES AND SERVICES REVIEW BOARD**

Pursuant to the authority granted by the Illinois Health Facilities Planning Act (20 Ill. Comp. Stat. 3960/1 et seq.) ("Act") and the Illinois Health Facilities Planning Procedural Rules ("Code") (77 Ill. Admin. Code 1130), the Health Facilities and Services Review Board ("HFSRB") hereby gives its Notice of an Intent to Impose a Fine, Notice of an Opportunity for an Administrative Hearing, and Notice of an Opportunity to Appear before the Health Facilities and Services Review Board as follows.

NOTICE OF INTENT TO IMPOSE A FINE

In accordance with Section 14.1 of the Act, HFSRB intends to impose a fine of **Twenty-Five Thousand Dollars (\$25,000.00)** against Respondent because Respondent failed to comply with the Act and Code as set forth below.

Respondent shall pay the fine of **Twenty-Five Thousand Dollars (\$25,000.00)** to HFSRB. Respondent shall make the fine payable to the **Illinois Department of Public Health** and send it to:

Health Facilities and Services Review Board
525 West Jefferson Street, Second Floor
Springfield, IL 62761

After receiving full payment, HFSRB will issue a final order dismissing this matter with prejudice.

Complainant bases its intent to fine Respondent **Twenty-Five Thousand Dollars (\$25,000.00)** on the following provisions of the Act and Code.

1. Section 12 of the Act states that:

For purpose of the Act, the [HFSRB] shall exercise the following powers and duties:

- (1) Prescribe rules, regulations, standards, criteria, procedures or reviews which may vary according to the purpose for which a particular review is being conducted or the type of project reviewed and which are required to carry out the provisions and purposes of this Act.

2. Section 14.1(b)(2) of the Act states that:

A permit holder who alters the scope of an approved project or whose project costs exceed the allowable permit amount without first obtaining approval from the State Board shall be fined an amount not to exceed the sum of (i) the lesser of \$25,000 or 2% of the approved permit amount and (ii) in those cases where the approved permit amount is exceeded by more than \$1,000,000, an additional \$20,000 for each \$1,000,000, or fraction thereof, in excess of the approved permit amount.

3. Section 1130.750(a) of the Code states:

Applicability

The cumulative effect of alterations to a project shall not exceed the following:

- 1) All alterations shall be reported to HFSRB before any alteration is executed. Some proposed alterations require HFSRB approval and some are prohibited. Proposed alterations that are not cited under these two categories require only written notification to HFSRB prior to execution of the alteration.

4. Section 1130.750(b) of the Code states:

Allowable Alterations Requiring HFSRB Approval

The cumulative effect of alterations to a project shall not exceed the following:

- 5) Any increase in the cost of the project not to exceed 7% of the total project cost. This alteration may exceed the capital expenditure minimum in place when the permit was issued, provided that it does not exceed 7% of the total project cost;

5. Section 1130.750(c) of the Code states:

Prohibited Alterations

Notwithstanding the provisions of subsection (b), the following alterations are not allowed and, if incurred, invalidate the permit:

- 1) an increase in the total project costs that exceeds 7% of the permit amount;

Respondent's alleged violations are based upon the following facts:

1. The HFSRB approved an alteration to increase Respondent's permit amount from \$9,489,675 to \$10,153,952. (Attachment A)
2. Subsequently, Respondent notified HFSRB staff that it expects the actual costs to exceed the new permit amount by approximately \$997,090, causing an unauthorized alteration pursuant to Section 1130.750 of the Code.
3. Pursuant to Section 14.1(b)(2) of the Act, the fine for this violation is the lesser of \$25,000 or 2% of the approved permit amount because the cost overrun does not exceed \$1,000,000.
4. Furthermore, the cumulative effect of the approved alteration and cost overrun is an increase of more than 7% of the total project cost, which, under Section 1130.750(b)(5), is an unallowable alteration and invalidates the permit.
5. Thus, to avoid further sanctions for establishing a health care facility without a permit, Respondent must obtain a new certificate of need permit for the project.

NOTICE OF AN OPPORTUNITY FOR AN ADMINISTRATIVE HEARING

In accordance with Sections 10 and 14.1(c) of the Act and Sections 1130.1010 and 1130.1020 of the Code, Respondent is hereby offered the opportunity to have an administrative hearing before an Administrative Law Judge to show cause why Respondent should not be fined, provided that Respondent requests the hearing within thirty (30) days of receiving this Notice.

Failure to request a hearing within thirty (30) days of receiving this Notice constitutes a waiver of that right.

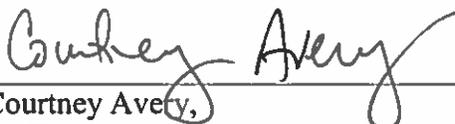
NOTICE OF AN OPPORTUNITY TO APPEAR
BEFORE THE HEALTH FACILITIES AND SERVICES REVIEW BOARD

In accordance with Section 14.1(c) of the Act, Respondent has the opportunity to appear before the HFSRB to respond to allegations contained in the Notice of Intent to Impose a Fine. The Respondent is NOT required to appear before the HFSRB at this time, but if Respondent wants to do so, Respondent must make the request within thirty (30) days of receiving this Notice.

Failure to request an opportunity to appear before the HFSRB within thirty (30) days of receiving this Notice constitutes a waiver of that right.

Submit the request for hearing and appearance before the HFSRB in writing to the General Counsel:

Juan Morado Jr.
Health Facilities and Services Review Board
69 West Washington Street, Suite 3501
Chicago, Illinois 60602



Courtney Avery,
Board Administrator,
Health Facilities and Services Review
Board

Dated this 11th day of September 2015.